



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Approve Minutes

- a) September 6, 2006 (Regular Meeting)
- b) September 20, 2006 (Regular Meeting)
- c) October 4, 2006 (Regular Meeting)
- d) October 17, 2006 (Shirtsleeve Session)
- e) October 18, 2006 (Regular Meeting)
- f) October 24, 2006 (Shirtsleeve Session)
- g) October 25, 2006 (Special Joint Meeting w/Various Boards and Commissions)

MEETING DATE: November 1, 2006

PREPARED BY: City Clerk

RECOMMENDED ACTION: That the City Council approve the following minutes as prepared:

- a) September 6, 2006 (Regular Meeting)
- b) September 20, 2006 (Regular Meeting)
- c) October 4, 2006 (Regular Meeting)
- d) October 17, 2006 (Shirtsleeve Session)
- e) October 18, 2006 (Regular Meeting)
- f) October 24, 2006 (Shirtsleeve Session)
- g) October 25, 2006 (Special Joint Meeting w/Various Boards and Commissions)

BACKGROUND INFORMATION: Attached are copies of the subject minutes, marked Exhibits A through G.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None required.

Randi Johl
City Clerk

RJ/JMP
Attachments

APPROVED: _____
Blair King, City Manager

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, SEPTEMBER 6, 2006**

EXHIBIT A

C-1 CALL TO ORDER / ROLL CALL

The City Council Closed Session meeting of September 6, 2006, was called to order by Mayor Hitchcock at 6:10 p.m.

Present: Council Members – Beckman, Hansen, Johnson, and Mayor Hitchcock

Absent: Council Members – Mounce*

Also Present: City Manager King, City Attorney Schwabauer, and Interim City Clerk Perrin

*NOTE: Council Member Mounce was absent due to her attendance at the League of California Cities Annual Conference in San Diego.

C-2 ANNOUNCEMENT OF CLOSED SESSION

a) Public employment – Council Appointee – job title, City Clerk, pursuant to Government Code §54957 (CM)

C-3 ADJOURN TO CLOSED SESSION

At 6:10 p.m., Mayor Hitchcock adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 6:46 p.m.

C-4 RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 7:01 p.m. Mayor Hitchcock reconvened the City Council meeting, and City Attorney Schwabauer disclosed that direction was given; no reportable action was taken.

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of September 6, 2006, was called to order by Mayor Hitchcock at 7:01 p.m.

Present: Council Members – Beckman, Hansen, Johnson, and Mayor Hitchcock

Absent: Council Members – Mounce*

Also Present: City Manager King, City Attorney Schwabauer, and Interim City Clerk Perrin

*NOTE: Council Member Mounce was absent due to her attendance at the League of California Cities Annual Conference in San Diego.

B. INVOCATION

The invocation was given by Pastor Chris Chavez, Heartland Community Church.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Hitchcock.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 Awards – None

D-2 (a) Mayor Hitchcock presented a proclamation to Stephanie Allen, Literacy Services Coordinator, proclaiming Friday, September 8, 2006, as "International Literacy Day" in the City of Lodi. Accomplishments for 2005-06 include 5,000 hours of volunteer service by 83 trained tutors, the equivalent of \$93,000; 37 new tutors were trained and matched with students; and 96 adult learners received instruction in the program. Ms. Allen recognized

Tillie Shock, tutor for over 10 years; Bev Cornelius, tutor for 13 years; and Helen Gross, 2006 Literacy Tutor of the Year award recipient.

D-2 (b) Mayor Hitchcock presented a proclamation to Julie Hayden representing the Lodi/Woodbridge Rose Society proclaiming the week of September 11 – 17, 2006, as “Lodi Week of the Rose” in the City of Lodi.

D-2 (c) Mayor Hitchcock presented a proclamation to Carrie Mettler representing the Bicuspid Aortic Foundation proclaiming the month of September 2006 as “Thoracic Aortic Aneurysm and Dissection Awareness (TAAD) Month” in the City of Lodi. TAAD is the bulging or tearing of the aorta in the chest and is a life-threatening but also highly treatable condition. Ms. Mettler provided information regarding TAAD (filed) and encouraged the public to visit the Bicuspid Aortic Foundation Web site at www.bicuspidfoundation.com.

D-3 (a) Interim City Clerk Perrin gave an update on the Centennial activities being planned for 2006.

E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Mayor Pro Tempore Johnson, Beckman second, approved the following items hereinafter set forth by the vote shown below:

Ayes: Council Members – Beckman, Hansen, Johnson, and Mayor Hitchcock

Noes: Council Members – None

Absent: Council Members – Mounce

E-1 Claims were approved in the amount of \$6,545,272.00.

E-2 The minutes of July 5, 2006 (Regular Meeting), July 19, 2006 (Regular Meeting), August 22, 2006 (Shirtsleeve Session), and August 25, 2006 (Special Meeting) were approved as written.

E-3 Approved the specifications and authorized advertisement for bids for Traffic Signal Preventive Maintenance and Repair Program, Fiscal Year 2006-07.

E-4 Adopted Resolution No. 2006-165 rejecting all bids for the Turner Road Underpass Pump Station Modifications Project.

E-5 “Adopt resolution authorizing the non-competitive purchase of a Jacobsen Model HR 9016 high-production rotary mower (\$82,293.43) and a Kubota 90 HP Engine retro fit kit (\$19,845.16), which includes \$5,000 for installation, from H.V. Carter Company, Inc., of Sacramento, for the Parks Division” was **removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar.**

E-6 Adopted Resolution No. 2006-166 awarding the contract for Stockton Street Asphalt Concrete Resurfacing, Kettleman Lane to 1,000 Feet South of Century Boulevard, to George Reed, Inc., of Lodi, in the amount of \$548,430 and approving Contract Change Order No. 1 in the amount of \$88,940, for a total contract price of \$637,374.

E-7 Adopted Resolution No. 2006-167 accepting the improvements under “Peterson Park West Playground, 199 Evergreen Drive” contract.

E-8 “Adopt resolution authorizing transit services outside of regular service operations for a private wedding on October 21, 2006, and authorizing the Transportation Manager to advertise to determine if a willing and/or able provider exists for this event” was **removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar.**

- E-9 Approved special transit fares for the Pink October Fashion Show in accordance with the Transit Fare Policy.
 - E-10 Adopted Resolution No. 2006-168 authorizing the City Manager to renew agreement between the Lodi Police Department and San Joaquin County Data Processing for fiscal year 2006-07 to provide data processing services and access to Automated Message Switching/Criminal Justice Information System for an estimated annual cost of \$16,738.51.
 - E-11 Set public hearing for September 20, 2006, to consider unmet transit needs in Lodi.
 - E-12 Set public hearing for September 20, 2006, to consider implementation of a new Substation and Transmission System Charge to be assessed as a development impact fee upon future electric utility customers outside existing City boundaries and making corresponding amendments to the applicable Electric Utility Department Rules and Regulations.
 - E-13 Set public hearing for November 1, 2006, to consider resolution establishing area of benefit and reimbursable costs for Lower Sacramento Road (Kettleman Lane to Harney Lane) improvements.
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ACTION ON ITEMS REMOVED FROM THE CONSENT CALENDAR

- E-5 “Adopt resolution authorizing the non-competitive purchase of a Jacobsen Model HR 9016 high-production rotary mower (\$82,293.43) and a Kubota 90 HP Engine retro fit kit (\$19,845.16), which includes \$5,000 for installation, from H.V. Carter Company, Inc., of Sacramento, for the Parks Division”

Mayor Pro Tempore Johnson expressed concern that this was a non-competitive purchase and questioned if this was the only company through which this equipment could be purchased.

Steve Dutra, Parks Superintendent, explained that this purchase was more accurately a “piggyback” purchase on a contract through the city of Sacramento versus a sole-source purchase as listed in the staff report. A “piggyback” purchase is allowed when an agency has followed the formal competitive bidding process, and the successful vendor agrees to offer its price to other public agencies. This price from H.V. Carter Company represents the valid price through the bid process conducted by the city of Sacramento, onto which the City of Lodi is piggybacking.

Mayor Pro Tempore Johnson suggested that future “piggyback” purchases be accurately reflected and explained in the staff report and not listed as a sole-source purchase.

MOTION / VOTE:

The City Council, on motion of Mayor Pro Tempore Johnson, Beckman second, adopted Resolution No. 2006-169 authorizing the non-competitive purchase of a Jacobsen Model HR 9016 high-production rotary mower in the amount of \$82,293.43 and a Kubota 90 HP Engine retro fit kit in the amount of \$19,845.16, which includes \$5,000 for installation, from H.V. Carter Company, Inc., of Sacramento, for the Parks Division. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Johnson, and Mayor Hitchcock
Noes: Council Members – None
Absent: Council Members – Mounce

- E-8 "Adopt resolution authorizing transit services outside of regular service operations for a private wedding on October 21, 2006, and authorizing the Transportation Manager to advertise to determine if a willing and/or able provider exists for this event"

Mayor Hitchcock recalled that in previous Council discussions these types of events were not included on the list of approved uses and she questioned why this request was being presented.

Public Works Director Prima responded that the City cannot compete with the private sector and must utilize the public transit system for public purposes only. Staff receives many requests from the public, and Federal rules allow the City to offer these types of services provided that the City advertises for a willing vendor. The Council-approved policy includes a standard list of routine events that are limited to in-town operations, and this request is outside of the normal hours of operation for the purpose of transporting guests to and from a local wedding reception.

Council Member Hansen questioned if this service would be subsidized by the City, to which Mr. Prima replied that full rates would be charged. He added that this request is not for exclusive transportation to this event; rather, it is for extending the hours of operation by one to two hours.

Mayor Hitchcock stated that she was not in favor of using the transit system in this manner; however, she stated she would support the request due to the short duration.

MOTION / VOTE:

The City Council, on motion of Mayor Hitchcock, Johnson second, adopted Resolution No. 2006-170 authorizing transit services outside of regular service operations for a private wedding on October 21, 2006, and authorizing the Transportation Manager to advertise to determine if a willing and/or able provider exists for this event. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Johnson, and Mayor Hitchcock

Noes: Council Members – None

Absent: Council Members – Mounce

F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Woody Alspaugh expressed concern regarding potential new developments that could negatively affect Lodi's small-town atmosphere and expressed support for preserving farmland in the San Joaquin valley.
- Shirley Plath shared information regarding a health and safety hazard at the Lake Park trailer court involving the garbage dumpster, which is utilized by multiple tenants, and requested that the City consider individual garbage containers. The residents at the trailer court are physically unable to clean the dumpster, and waste management has yet to address the issue. Mr. King stated that staff would obtain the necessary information from Ms. Plath and look into the matter.
- Ramon Garcia addressed the Council regarding the issue of taco trucks and stated that, as a former restaurant owner on Pine and Washington Streets, they did not inconvenience him; however, he expressed concerns regarding the sanitation of the trucks and the fact that they do not pay property, unemployment, or franchise taxes.

In response to Council Member Hansen, Community Development Director Hatch stated that Community Improvement is presently implementing a phased code enforcement program and will be returning to Council with a component of the development code, which would address mobile vendors and temporary use permits. No date has yet been set for this discussion. Council Member Hansen expressed concern that mixed messages are being given as to whether or not this item will come before Council and he believed those interested should state their concerns under the public comments portion of the agenda.

Mayor Pro Tempore Johnson added that some of the confusion may be due to the newspaper incorrectly stating that Council would be discussing the issue of taco trucks at this meeting.

- Mirna Ruiz requested that Council agendaize the issue of mobile food vendors at its next regular Council meeting. The vendors have many concerns, have formed a committee, and are looking for an attorney to represent their interests.

Council Member Beckman agreed and requested that this matter be placed on the next agenda to examine the occurrences and progress to date, as well as to hear the concerns of the public, to which Council Member Hansen concurred.

- David Johnson requested that Council schedule a meeting to re-evaluate the role of the Site Plan and Architectural Review Committee (SPARC) in the planning process and how the Committee can overturn a decision of the Planning Commission on a conditional use permit. Mr. Johnson believed that the current process was backwards and that it should instead first go before SPARC for approval, followed by approval by the Planning Commission and Council. To date, he has received little cooperation from City staff and he hoped Council would look into the matter.

In response to Council Member Beckman, Mr. Hatch explained that, in the Vineyard Christian Middle School proposal, SPARC was delegated the task from the Planning Commission to review and approve the details on landscape, color, materials, and the architectural design of the building; however, the applicants presented an amended plan to SPARC than the one submitted to the Planning Commission, and it was determined that it was within the scope of SPARC to approve the change. Mr. Hatch confirmed that, had the proposal not been appealed, the Planning Commission would not have seen the revised plans. Council Member Beckman agreed that the procedures need to be reviewed and improved upon in order to ensure that SPARC does not exceed the Planning Commission's authority.

G. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- Council Member Hansen reported that he has been selected to serve as the vice chair of the Northern California Power Agency (NCPA) Commission and chair of the NCPA Law and Regulations Committee. Further, he reported that the San Joaquin Council of Governments (SJCOG) voted to support three propositions on the November ballot: 1) Proposition 1A, which is a bond measure for transportation funding; 2) Proposition 1B regarding highway safety, traffic reduction, air quality, and port security; and 3) Proposition 1E, which is the Disaster Preparedness and Flood Prevention Bond Act of 2006, all of which are billion dollar bond measures. SJCOG believed that these measures would complement Measure K, which is the renewal of the quarter cent sales tax for transportation.

H. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

- City Manager King announced that California Coastal Clean Up Day is Saturday, September 16 at Lodi Lake, at which volunteers will clean up litter and debris around the Lake. The purpose of this event is to reinforce the principle that what goes into the storm drain system will eventually end up in the ocean. Further, Mr. King stated that the Fall/Winter Community Arts Directory has been mailed to residents announcing a wide variety of classes, as well as sports sign ups, and he encouraged the public to take advantage of these programs.

I. PUBLIC HEARINGS

- I-1 "Public hearing to consider two different appeals, one from the Vineyard Christian Middle School and one from a group of neighbors regarding the Planning Commission's decision of July 26, 2006, to approve the site and architectural plan for Vineyard Christian Middle School to place a private 6th, 7th, and 8th grade school on the grounds of Lodi Avenue Baptist Church located at 2301 West Lodi Avenue (File #06-SP-06)" *NOTE: This item is a quasi-judicial hearing and requires disclosure of ex parte communications as set forth in Resolution No. 2006-31.*

Mayor Hitchcock reported that the two appellants on this matter submitted a letter (filed) withdrawing both appeals.

PUBLIC COMMENTS:

- Alyssa Oliver agreed with the earlier comment that the role of the Site Plan and Architectural Review Committee (SPARC) should be reviewed in order for those involved to clearly understand and follow the process. Further, Ms. Oliver, on behalf of the Vineyard Christian Middle School (VCMS), thanked the City Council, Planning Commission, SPARC, and City staff for their efforts toward the school use permit. She additionally recognized David Johnson and the Benson Tract neighbors for their work toward a final resolution with Lodi Avenue Baptist Church and VCMS.

Both Mayor Hitchcock and Council Member Hansen congratulated and thanked the neighbors and school for mediating a settlement that was agreeable to all.

MOTION / VOTE:

This appeal was withdrawn by the appellants; no Council action was taken on this matter.

J. COMMUNICATIONS

- J-1 On recommendation of the City's contract administrator and Human Resources staff, the City Council, on motion of Council Member Beckman, Hansen second, rejected the following claim by the vote shown below:

Ayes: Council Members – Beckman, Hansen, Johnson, and Mayor Hitchcock

Noes: Council Members – None

Absent: Council Members – Mounce

- a) Simone Dumas, date of loss: first week of June 2006

- J-2 The following postings/appointments were made:

- a) The City Council, on motion of Council Member Beckman, Johnson second, directed the City Clerk to post for the following vacancy by the vote shown below:

Ayes: Council Members – Beckman, Hansen, Johnson, and Mayor Hitchcock

Noes: Council Members – None

Absent: Council Members – Mounce

Lodi Arts Commission

Robert Clemons Term to expire July 1, 2007

- J-3 Miscellaneous – None

K. REGULAR CALENDAR

- K-1 "Set public hearing for September 20, 2006, to consider changes to the Net Energy Metering Rate – Schedule NEM and establish the new Co-Energy Metering Rider – Schedule CEM ordinances"

Sondra Huff, Senior Electric Utility Rate Analyst, reported that in 2003 Assembly Bill (AB) 58 required utilities to establish a net metering rate for customers who install solar or wind. Senate Bill (SB) 1, the solar energy and net metering bill, was signed by Governor Schwarzenegger this week, which incorporates the requirements of AB 58. In 2003, the City opted not to exercise the option offered within the legislation for co-energy metering for larger installations. Net metering is for small units that produce up to ten kilowatts (KW) of power; whereas, co-metering will be for those that produce ten KW up to one megawatt (MW) of power. Net metering utilizes a single meter, which nets electricity flow into a customer with solar/wind energy out from a customer, and customers receive full retail

rates for their solar/wind generation. As an example, a large residential customer could receive a credit for generation for 31 to 33 cents a KW hour. Co-metering utilizes two meters: one to measure electricity delivered to customers and the other to measure electricity generated. Customers receive service at the applicable rate schedule, and the energy generated is credited back to them at the average cost of generation, which is presently half of the retail rate. The purpose of this law was to address the fact that smaller municipal utilities may not receive the revenue necessary to service these customers, which places an economic burden on the utility and rate payers. This proposed action would clean up the net metering rate and clarify that these are non-by-passable charges. For co-metering, customers would be charged at the retail rate, and the City would be required to credit them at the average cost of generation, approximately one half of the retail rate, which requires two meters. SB 1 further changed the amount of net metering and co-metering that the City is required to make available, which would be 2.5% of the peak load, or 3,500 KW. With the climate and rates, Ms. Huff believed that Lodi would become a magnet for the larger units. To date, there are two such units, with one more expected in the near future, and the co-energy metering schedule would help to limit the City's exposure to these costs.

In response to Mayor Hitchcock, Ms. Huff explained that, if the City were fully subscribed, it could realize retail sales revenue of \$750,000.

City Manager King summarized that the primary issue for this proposal was to reduce the amount the City pays for purchasing back the energy. In response to Mr. King, Ms. Huff estimated that the City would realize \$30,000 in net reduction for this year. She further reiterated that residential customers would continue to be credited at the full retail rate.

In response to Mayor Pro Tempore Johnson, Ms. Huff stated that the rebate program for installing solar facilities was fully subscribed and is currently not offered in the public benefit program for this year; however, legislation does require that a program be offered, which will be brought before Council in the future.

Council Member Hansen added that this legislation is tied to energy efficiencies and Governor Schwarzenegger's Million Solar Roofs Initiative. This mandate comes from the State; however, he believed that wind and solar were popular alternatives for utilities to consider in generating energy efficiently.

MOTION/ VOTE:

The City Council, on motion of Council Member Hansen, Johnson second, set public hearing for September 20, 2006, to consider changes to the Net Energy Metering Rate – Schedule NEM and establish the new Co-Energy Metering Rider – Schedule CEM ordinances. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Johnson, and Mayor Hitchcock

Noes: Council Members – None

Absent: Council Members – Mounce

RECESS

At 8:36 p.m., Mayor Hitchcock called for a recess, and the City Council meeting reconvened at 8:48 p.m.

K. REGULAR CALENDAR (Continued)

- K-2 “Provide direction regarding the use of viable funding options needed to offset costs associated with Lodi Grape Bowl related improvements and events”

City Manager King reported that immediate interim improvements are necessary at the Grape Bowl to bring the facility into compliance with Americans with Disabilities Act (ADA) standards, as well as various public safety related enhancements. The Grape Bowl Ad Hoc

Committee recently suggested that a ticket surcharge be implemented to address the interim improvements, which would pass the costs onto the users of the facility (i.e. primarily high school and Pop Warner football games). As staff began to explore this proposal, potential challenges arose with the surcharge that would indicate there may be other options for consideration in raising the necessary revenue.

Tony Goehring, Parks and Recreation Director, outlined the following challenges with implementing a ticket surcharge:

- League rules place a cap on the price of tickets sold at the gate for all schools within the League in order to maintain parity among entities.
- The difference between the League cap and the ticket surcharge would reduce the amount of gross receipts to the Lodi Unified School District, which would create a shortfall in the school athletic programs and budgets.
- There is a discrepancy between the number of people attending games versus those that actually paid at the gate due to pre-paid student body activity and adult punch discount cards that are sold at the schools.
- Based on estimated figures, Mr. Goehring anticipated that total revenue collected would equate to \$7,500, which is minimal when compared to the \$500,000 to \$850,000 price tag for the ADA improvements.

Mr. Goehring reviewed the following alternatives for raising the needed revenue:

1. Contract with the concessionaires to split the gross receipts from concession stand sales between the City and the concessionaire; however, this proposal may negatively affect some of the schools as not all of the revenue goes toward the athletic department. The money would go toward the department or activity that staffed the concession stand (e.g. Key Club, music department, etc.).
2. Determine incremental costs (i.e. those over and above day-to-day maintenance and operations costs to the City) and improvement costs and bill the users at the end of the season for those costs. This alternative may require an amendment to the joint use agreement between the City of Lodi and the School District.
3. Roll the incremental and improvement costs into a flat fee per game that would be charged to each user, whether it is the School District, Boosters of Boys and Girls Sports (BOBS), or another user.

Mr. Goehring believed that Options 2 and 3 would have the most potential in recovering a greater portion of the costs than the ticket surcharge and would serve as a way for all users to pay their fair share to help preserve this facility.

Mayor Pro Tempore Johnson questioned whether the League cap took into consideration economic difficulties of outside entities and what the rules were for games played at college or state level stadiums. Mr. Johnson further stated that he believed the City had a reprieve on the timeframe to meet the ADA requirements, as long as it did not add extra events to the Grape Bowl, and he questioned what priority improvements needed to be made during this interim period.

Mr. Goehring responded that the priority list is broken into three sections: 1) South side retrofit work with 13 projects, some of which are ADA improvements with most addressing the public safety issues, totaling \$41,700; 2) Option 1 improvements, which include a commercial lift that would allow the disabled community access from the street level up to the rim to sit near the press box on the south side, at a cost of \$550,000; and 3) Option 2, which included major ADA improvements at the east end of the stadium that would allow access to the disabled community, at a cost of \$850,000. Option 2 and the reduced dollar amount came from input from members representing the disabled community during a tour of the Grape Bowl.

Jerry Herzick, Building Official, added that the priority list prepared in conjunction with Parks and Recreation and the disabled community included general safety and maintenance-type issues (e.g. tripping hazards, grade differentials, loose handrails, damaged stairs, fencing off areas in the bleacher section, restroom improvements, etc.). The \$41,000 worth of accessibility and safety issues need to be addressed immediately. The ADA Transition Plan sets forth a goal to rehabilitate the entire Grape Bowl facility by 2008-10; however, both the Plan and the Grape Bowl Ad Hoc Committee recommend that interim measures be implemented to bring the facility into compliance.

Mayor Pro Tempore Johnson summarized that the \$41,000 would address many of the safety issues, that the City is not violating the ADA Transition Plan, and that the Grape Bowl Ad Hoc Committee would continue to generate funds to bring the facility into ADA compliance, to which Mr. Herzick concurred.

Mayor Hitchcock questioned if failing to address the \$41,000 in improvements would expose the City to liability, to which City Attorney Schwabauer replied in the affirmative. Mr. Herzick added that there is case law where cities have made reasonable attempts to comply knowing the budget constraints and the courts have upheld that; however, the courts have not looked favorably on those who ignored the improvements.

PUBLIC COMMENTS:

- Bill Huyett, Superintendent of the Lodi Unified School District, concurred that this is a significant issue that both the School District and the City must work together to address, and it has been discussed at length over the past year at its 2x2 meetings. Mr. Huyett spoke in support of the joint use agreement and suggested the 2x2 committee examine the agreement for a potential solution. The surcharge concept is cumbersome, has challenges, and would ultimately not raise the amount of revenue needed to address these concerns.

In response to Council Member Hansen, Mr. Huyett explained that the student body activity and adult punch discount cards are not School District issued cards; they are specific to the individual schools.

- Gary Knackstedt, Activity Director at Lodi High School, believed that Mr. Goehring overestimated the gate receipts and he expressed concern regarding the loss of funding for the athletic department. Other than transportation funding from the School District, the athletic department is 100% self-sufficient, partially from the proceeds of the student body activity and adult punch discount cards.
- Erik Sandstrom, Principal at Tokay High School, concurred that the estimates on attendees was high and believed that the revenue coming in would be miniscule compared to the amount needed. Mr. Sandstrom expressed concern that it would be the student body and parents burdened with covering these costs as users of the facility. He further clarified that the League has capped ticket prices for different levels of competitions; therefore, games played at Spanos or University of Pacific also have a set ticket charge. Mr. Sandstrom believed that it would set a dangerous precedence to amend the joint use agreement, which has worked very well for both the School District and the City. In regard to concession sales, he believed that very little funds would be generated.

In response to Council Member Hansen, Mr. Huyett stated that he only first heard of these proposals tonight and would like the opportunity to review them, along with City staff and elected officials on the 2x2 Committee.

Council Member Hansen suggested that the athletic departments and various booster organizations support this endeavor by taking it on as a project.

MOTION / VOTE:

Following discussion, the City Council expressed concurrence to refer the matter to the City of Lodi and Lodi Unified School District 2x2 Committee for review, after which the matter would be brought back before both entities for presentation/approval.

- K-3 "Request City Council set date for special meeting to conduct Assembly Bill 1234 ethics training to Council Members and affected board and commission members"

Council Member Beckman noted that the Library Board was listed in the staff report to be included in the training and he questioned if Library Board members attended conferences, to which Mr. Schwabauer replied in the affirmative. Mr. Beckman requested that Council be provided with a report as to which conferences they attend.

Mr. Schwabauer reported that this two-hour ethics training is required by law and will cover requirements of the Fair Political Practices Commission and Government Code Section 1090. He recommended that the training be set for Wednesday, October 25.

Mayor Pro Tempore Johnson questioned why the training was not extended to all Council-appointed board and commission members in order to save time and money as this training is required every two years, to which Mr. Schwabauer responded that Council could by policy require additional individuals to participate than those required by law.

In response to Council Member Hansen, Mr. Schwabauer stated that the League of California Cities offers an on-line course for those who cannot attend the mandatory training.

MOTION / VOTE:

The City Council expressed concurrence to set October 25, 2006, from 6:00 – 8:00 p.m. at the Carnegie Forum, as the date, time, and place for a special joint meeting for Assembly Bill 1234 ethics training.

L. ORDINANCES

- L-1 Following reading of the title of Ordinance No. 1783 entitled, "An Ordinance of the City Council of the City of Lodi Amending Lodi Municipal Code Title 5 – Permits and Regulations – by Adding Chapter 5.25, 'Pedicabs,'" having been introduced at a regular meeting of the Lodi City Council held August 16, 2006, the City Council, on motion of Council Member Beckman, Hansen second, waived reading of the ordinance in full and adopted and ordered it to print by the following vote:

Ayes: Council Members – Beckman, Hansen, Johnson, and Mayor Hitchcock

Noes: Council Members – None

Absent: Council Members – Mounce

Abstain: Council Members – None

- L-2 Following reading of the title of Ordinance No. 1784 entitled, "An Ordinance of the City Council of the City of Lodi Re-Classifying 220 Acres Located on the South Side of Harney Lane between State Highway 99 and the Union Pacific Railroad to the West (Reynolds Ranch) from San Joaquin County AG-40 (Agriculture, General, Minimum 40 Acres) Zone to City of Lodi PD (Planned Development) Zone, Which Includes Designations Specific to Housing, Commercial, Office, and Public/Quasi-Public (Zone Change 06-Z-02)," having been introduced at a regular meeting of the Lodi City Council held August 16, 2006, the City Council, on motion of Council Member Beckman, Hansen second, waived reading of the ordinance in full and adopted and ordered it to print by the following vote:

Ayes: Council Members – Beckman, Hansen, Johnson, and Mayor Hitchcock

Noes: Council Members – None

Absent: Council Members – Mounce

Abstain: Council Members – None

- L-3 Ordinance No. 1785 entitled, "An Ordinance of the City Council of the City of Lodi Adopting a Development Agreement Pertaining to the Development of 220 Acres Located on the South Side of Harney Lane Between State Highway 99 and the Union Pacific Railroad to the West (Reynolds Ranch) (Development Agreement 06-GM-01)"

PUBLIC COMMENTS:

- Kathy Haring expressed concern that the development plan would immediately grant the developer 350 growth management allocations this year and would continue to grant 73 growth management allocations automatically each year for the next eight years. She believed that existing law did not provide a mechanism for the Reynolds Ranch project to be exempt from the growth management ordinance. In order for the growth management ordinance to address small infill projects, she suggested that the language under exemptions be amended from "projects of four units or less" to "projects of ten units or less." The California Environmental Quality Act, environmental impact review, and required public hearings do not apply to infill projects, and she believed it was unnecessary to delay these small projects. Ms. Haring requested Council consider her suggestion to change the growth management allocation process effectively immediately so infill development projects can move forward without being in the growth management process.

In response to Council Member Hansen, Community Development Director Hatch explained that the growth management allocation is designed for larger projects, which typically require some type of environmental review. There are a small number of infill projects as part of this year's allocation application, and he is proposing to separate out those projects and take them to the Planning Commission for concurrence; however, there would still be an environmental process required on some. All of the projects compete and are weighed against one another; although, it is not a meaningful competition as everyone receives an allocation if they meet the standards and qualifications, and the allocation is then based upon the merits of the project; not the scarcity of the allocation credit. He believed that the number of "four units or less" in the growth management ordinance was representative of what other cities have done.

City Attorney Schwabauer reiterated that the allocation process only comes into play when there are more allocations requested than there are available to grant, and there is no doubt that Ms. Haring will receive the allocations she has requested.

Ms. Haring questioned why small developers must wait a year to receive the allocation when they cannot afford the delay. She further pointed out that medium density has the smallest amount available and if the City allocates 250 in one year it would run out of allocations.

Mayor Hitchcock questioned how the allocations would be granted now that some fall under a development agreement and others do not. She stated that Reynolds Ranch received 65% medium density and 10% low density, which represents a change from the growth management ordinance.

Mr. Schwabauer clarified that the allocations given to Reynolds Ranch were low-density allocations and were not taken from the medium reserve. The City Council created a new designation in the development agreement, Planned Residential, which made the allocations available through low density. The development agreement legislation was crafted to give developers and cities the ability to negotiate certain benefits to both sides. Ms. Haring is suggesting that the developer has taken advantage of the process, which she believed to be unfair. Mr. Schwabauer stated that the development agreement process is available to her as well should she wish to pay more in impact fees through community benefits (i.e. there must be an economic exchange to occur in order to receive the benefit).

Mr. Hatch stated that the Reynolds Ranch project is within the growth management ordinance—it is controlled by the 2% cumulative, there are no additional allocations

outside of this project, and it takes the balance and allocates those through the development agreement. It does go out further than what is allowed in the growth management ordinance; however, development agreements have the power to do so.

Mr. King clarified that there is no automatic allocation of the growth allocations; however, it is a three-year rolling cycle. There are currently 3,830 growth allocations available, which are broken down into categories: 1,715 single family; 3,430 medium density; and 1,772 high density. There are 200 allocations being provided in high density to Reynolds Ranch, with the remainder coming from low density, and there is no impact to medium density. He believed there were a sufficient number of applications and he pointed out that there are 450 allocations available annually.

Further discussion ensued regarding the Reynolds Ranch units and allocations, and Mr. King summarized that the definition of low density in the development agreement allows for more affordable housing units to be produced.

- Dale Gillespie, representing San Joaquin Valley Land Company, agreed with Ms. Haring that there could be a more streamlined process for smaller infill projects by exempting those projects of a certain size.

MOTION / VOTE:

Following reading of the title of Ordinance No. 1785 entitled, "An Ordinance of the City Council of the City of Lodi Adopting a Development Agreement Pertaining to the Development of 220 Acres Located on the South Side of Harney Lane Between State Highway 99 and the Union Pacific Railroad to the West (Reynolds Ranch) (Development Agreement 06-GM-01)," having been introduced at a regular meeting of the Lodi City Council held August 16, 2006, the City Council, on motion of Council Member Beckman, Hansen second, waived reading of the ordinance in full and adopted and ordered it to print by the following vote:

Ayes: Council Members – Beckman, Hansen, and Johnson
Noes: Council Members – Mayor Hitchcock
Absent: Council Members – Mounce
Abstain: Council Members – None

COMMENT ON NON-AGENDA ITEM

- Dale Gillespie stated that the City for decades has maintained the Grape Bowl, yet the School District receives a huge benefit from the facility without any direct expense attributed to it. On behalf of the San Joaquin Valley Land Company, Mr. Gillespie offered to donate \$21,000, half of the cost for the Americans with Disabilities Act improvements, if the School District matched the amount and made its decision within 90 days.

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 10:24 p.m.

ATTEST:

Jennifer M. Perrin
Interim City Clerk

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, SEPTEMBER 20, 2006**

EXHIBIT B

C-1 CALL TO ORDER / ROLL CALL

The City Council Closed Session meeting of September 20, 2006, was called to order by Mayor Pro Tempore Johnson at 5:07 p.m.

Present: Council Members – Beckman, Hansen, Johnson, Mounce, and Mayor Hitchcock (arrived at 6:36 p.m.)

Absent: Council Members – None

Also Present: City Manager King, City Attorney Schwabauer, and Interim City Clerk Perrin

C-2 ANNOUNCEMENT OF CLOSED SESSION

- a) Actual litigation: Government Code §54956.9(a); one case; Peter Rose et al. v. the City of Lodi, et al.; United States District Court, Eastern District of California, Case No. 2:05-CV-2232 GEB/PAN and consolidated cases
- b) Conference with Blair King, City Manager, and Jim Krueger, Deputy City Manager (Acting Labor Negotiators), regarding Lodi Professional Firefighters and Police Mid-Management, pursuant to Government Code §54957.6
- c) Actual litigation: Government Code §54956.9(a); one case, City of Lodi v. Michael C. Donovan, an individual; Envision Law Group, LLP, et al., San Francisco, Superior Court, Case No. CGC-05-441976
- d) Actual litigation: Government Code §54956.9(a); one case; Hartford Accident and Indemnity Company, et al. v. City of Lodi, et al., Superior Court, County of San Francisco, Case No. 323658
- e) Actual Litigation: Government Code §54956.9(a); one case; People of the State of California; and the City of Lodi, California v. M & P Investments, et al., United States District Court, Eastern District of California, Case No. CIV-S-00-2441 FCD JFM

C-3 ADJOURN TO CLOSED SESSION

At 5:07 p.m., Mayor Pro Tempore Johnson adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 6:56 p.m.

C-4 RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 7:07 p.m., Mayor Hitchcock reconvened the City Council meeting, and City Attorney Schwabauer disclosed the following actions.

Items C-2 (a) through (e) were discussion only.

In regard to Item G2 (e), settlement direction was given with regard to the Northern Plume; no reportable action was taken.

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of September 20, 2006, was called to order by Mayor Hitchcock at 7:07 p.m.

Present: Council Members – Beckman, Hansen, Johnson, Mounce, and Mayor Hitchcock

Absent: Council Members – None

Also Present: City Manager King, City Attorney Schwabauer, and Interim City Clerk Perrin

B. INVOCATION

The invocation was given by Barbara Taylor, Lodi Police Chaplains.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Hitchcock.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 Awards – None

D-2 Proclamations – None

D-3 (a) Bob Bechill with the Lodi Area All Veterans Plaza Foundation presented a check to Mayor Hitchcock in the amount of \$10,000 as payment on loan from the City of Lodi. Mr. Bechill invited the public to attend the Veterans Day event at the Plaza on November 11 at 11 a.m., at which Mayor Pro Tempore Johnson, who is also a Marine Corp. veteran, will serve as guest speaker.

E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Council Member Beckman, Mounce second, unanimously approved the following items hereinafter set forth **except those otherwise noted**:

E-1 Claims were approved in the amount of \$6,578,627.09.

E-2 The minutes of August 1, 2006 (Shirtsleeve Session), August 8, 2006 (Shirtsleeve Session), August 15, 2006 (Shirtsleeve Session), August 29, 2006 (Shirtsleeve Session), and September 5, 2006 (Shirtsleeve Session) were approved as written.

E-3 Approved the plans and specifications and authorized advertisement for bids for Domestic Outfall Sewer Pipeline Condition Assessment.

E-4 Authorized staff to issue requests for qualifications and develop a qualified-vendor database for financial planning, electric utility rates, power supply planning, and/or engineering services for the Electric Utility Department for future projects.

E-5 Approved request for proposals for plans examining and building inspection services.

E-6 Adopted Resolution No. 2006-171 establishing Dell, M P C, and Hewlett Packard brands as the standards for desktop and notebook computers purchased for use in the City.

E-7 Adopted Resolution No. 2006-172 appropriating additional funds for Change Order No. 14 for Lower Sacramento Road Widening Project, Kettleman Lane to Harney Lane, in the amount of \$40,925.

E-8 Adopted Resolution No. 2006-173 accepting improvements under "White Slough Water Pollution Control Facility Holding Pond No. 1 Rehabilitation, 12751 North Thornton Road" contract and appropriating additional funds in the amount of \$1,500.

E-9 Approved amendment to the Northeastern San Joaquin County Groundwater Banking Authority Joint Powers Agreement extending the term two years.

- E-10 "Adopt resolution amending the Electric Utility Department Rules and Regulations Nos. 13, 15, and 16 to recover the full cost of expanding the electric distribution system from new electric load" was **removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar.**
- E-11 Accepted for filing the draft 2006 resolution amending the list of boards, commissions, City employees, and officers subject to Conflict of Interest reporting requirements for publication and public comment (pursuant to Government Code §87306.5).
- E-12 Adopted Resolution No. 2006-174 amending the Memorandum of Understanding with the Lodi Professional Firefighters for the period July 1, 2006 through June 30, 2007.
- E-13 Adopted Resolution No. 2006-175 amending the Memorandum of Understanding with the Lodi Police Mid-Management Organization for the period July 1, 2006 through June 30, 2007.
- E-14 Adopted Resolution No. 2006-176 appointing Randi Johl to the position of City Clerk and approving employment agreement.
-

ACTION ON ITEM REMOVED FROM THE CONSENT CALENDAR

- E-10 "Adopt resolution amending the Electric Utility Department Rules and Regulations Nos. 13, 15, and 16 to recover the full cost of expanding the electric distribution system from new electric load"

NOTE: Due to a potential conflict of interest stemming from his employment with the Building Industry Association (BIA) of the Delta, Council Member Beckman abstained from discussion and voting on this matter and vacated his seat at the dais at 7:15 p.m.

PUBLIC COMMENTS:

- Kevin Sharrar, Executive Director of the BIA of the Delta, reported that, according to the realtors association, the median sales price of homes in Lodi has increased 39% in the last two years and that, in the second quarter of 2006, San Joaquin County ranked number 12 as the least affordable county in the nation. He expressed concern about adding further homebuyer fees and whether it would be counterproductive to facilitating housing that is as affordable as possible in Lodi. Mr. Sharrar requested that the building industry be given an opportunity to review this proposal and discuss the matter with City staff prior to any Council action; therefore, he requested that the matter be tabled until the regular City Council meeting of November 1.

City Manager King clarified that items E-10 and I-2 were both related to the cost of providing electric service to new development—E-10 was a policy change and not a fee; whereas, I-2 is related to an impact fee, which is consistent with the requirements of Assembly Bill 1600. He suggested that Council either hear the report and take action on this item or hold it over and discuss both items simultaneously.

In response to Council Member Hansen, Electric Utility Director Morrow stated that research done by staff indicates that the standard among electric utilities is to assess the cost of extending the electric system to serve new growth and development to those that cause the expenditure. He added that the exception is Pacific Gas & Electric (PG&E), which is due to its regulated status. PG&E has the potential to receive refunds, which it returns to the rate base in order to receive a rate of return. Lodi and similar municipal utilities are "not for profit" organizations and are unable to do so; therefore, utilities pass these costs onto the developers.

Mayor Pro Tempore Johnson suggested that both Items E-10 and I-2 be held over in order to give staff the opportunity to meet with the BIA and other interested parties, to which Council Member Hansen concurred.

Mayor Hitchcock expressed support for moving forward with this matter as it was previously presented to Council and was appropriately posted.

MOTION #1 / VOTE:

The City Council, on motion of Council Member Hansen, Johnson second, voted to carry over this item to the regular City Council meeting of November 1, in order to give staff the opportunity to meet with interested parties regarding this matter. The motion carried by the following vote:

Ayes: Council Members – Hansen, Johnson, Mounce, and Mayor Hitchcock
Noes: Council Members – None
Absent: Council Members – None
Abstain: Council Members – Beckman

Discussion ensued regarding tabling Item I-2 as well, following which Mr. King requested that staff be given the flexibility to select an appropriate time to hear both matters simultaneously, as there were a number of upcoming projects that could cause a conflict in scheduling.

MOTION #2 / VOTE:

The City Council, on motion of Council Member Hansen, Beckman second, voted to reconsider tabling the subject matter to the regular meeting of November 1. The motion carried by the following vote:

Ayes: Council Members – Hansen, Johnson, Mounce, and Mayor Hitchcock
Noes: Council Members – None
Absent: Council Members – None
Abstain: Council Members – Beckman

MOTION #3 / VOTE:

The City Council, on motion of Council Member Hansen, Johnson second, voted to table this item in order to give staff the opportunity to meet with interested parties regarding this matter and return to Council at a future date. The motion carried by the following vote:

Ayes: Council Members – Hansen, Johnson, Mounce, and Mayor Hitchcock
Noes: Council Members – None
Absent: Council Members – None
Abstain: Council Members – Beckman

NOTE: Council Member Beckman returned to his seat at the dais at 7:35 p.m.

F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

None.

G. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- Council Member Mounce presented a report on the League of California Cities annual conference that she recently attended and highlighted the following topics that were covered:
 - How communities will accommodate the baby boomer generation in order to provide housing and various amenities for that segment of the population as it continues to grow;
 - What communities have done in regard to historical preservation and creating additional value to older neighborhoods—she would like to see this matter incorporated into the General Plan update;

- Approaches to saving the Grape Bowl through free enterprise; and
- Cost saving and cutting edge water treatment plants.

Further, Ms. Mounce expressed concern regarding the rehabilitation of single-family units on the east side, stating that many small cottage-type homes are being replaced with large two-story single-family homes, without review from the Planning Commission. She believed that there is a loophole in the process and requested a future item be placed on the agenda to discuss this matter.

In response to Council Member Hansen, Ms. Mounce stated that the property owners do obtain the necessary building permits; however, they are not presently required to go through the planning process, and the surrounding residents are not notified of the type of structure that will be built in its place.

- Council Member Hansen reported that Pacific Gas & Electric (PG&E) has filed an application with the California Public Utilities Commission (CPUC) seeking authority to offer line extension rates to customers that are served by municipally-owned utilities. He stated that the Northern California Power Agency (NCPA) has filed a protest with the CPUC, arguing that its application is contrary to established law, CPUC precedence, and sound public policy, as well as being anti-competitive. Mr. Hansen reported that a new business will soon be locating in Lodi, which will occupy an existing building and bring up to 40 jobs with the promise of more in a short period of time. Further, Mr. Hansen provided an update regarding Senate Bill 1368 concerning California's goal of reducing greenhouse gases and the battle over interjecting another state agency to regulate this mandate versus maintaining local control. There is an effort underway to encourage Governor Schwarzenegger to veto the bill.
- Mayor Pro Tempore Johnson expressed his appreciation to Deputy City Clerks Jennifer Perrin and Jackie Taylor and Administrative Clerk Dana Chapman for their hard work and effort in covering the City Clerk's Office during this interim period, particularly in light of the fact that Lodi is in the midst of a heavy election season. The new City Clerk will be on board in the very near future.

H. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

None.

I. PUBLIC HEARINGS

- I-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hitchcock called for the public hearing to consider unmet transit needs in Lodi.

Tiffani Fink, Transportation Manager, reported that the Transportation Development Act requires a public hearing to be conducted annually to address unmet transit needs. There is a process through the San Joaquin Council of Governments (SJCOC) and the Social Service Technical Advisory Committee, which receives the comments countywide, compares them against the definition of an unmet need, and assesses what needs are reasonable to meet. The purpose of this hearing is to determine if there are needs that can be addressed this year or if there are services that need to be modified or are lacking.

Mayor Hitchcock passed along a complaint she received regarding the connection from GrapeLine to the Altamont Commuter Express (ACE) and the fact that there is no longer a direct bus to ACE.

Ms. Fink responded that there has not been a direct service from Lodi to ACE in quite some time, and the Regional Transit District (RTD) now has a downtown transfer center, at which most transportation routes are directed for transfers to another line. Ms. Fink pointed

out that RTD has had significant cutbacks in its time schedules in order to manage its resources and further stated that all routes going to Stockton are handled by RTD.

Mayor Pro Tempore Johnson expressed disappointment with the amount of money and effort being spent to promote ACE and stated that it should not be this difficult for riders to connect with ACE.

Council Member Mounce stated that she received an e-mail message from Anna Hjalmer (filed) expressing her difficulty in getting on the GrapeLine and Dial-A-Ride buses as a member of the disabled community.

Hearing Opened to the Public

- Maria Burkes stated that she works with the disabled population and expressed her concern that the Lodi transit staff does not have an understanding of the developmental state and mental capacity of her clients.

Public Portion of Hearing Closed

Mr. King stated that he recently met with the director of RTD who indicated that it was attempting to improve the issue of coordination, as well as providing the same method of payment whether it be on a City bus or an RTD bus. He further added that RTD is a separate body with a separate governing body, which conducts its own unmet transit needs hearing.

MOTION / VOTE:

There was no Council action taken on this matter.

- I-2 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hitchcock called for the public hearing to consider adopting a resolution amending the Electric Utility Department Rules and Regulations No. 15 to assess a Transmission and Substation System charge on new developments outside existing City limits as of August 1, 2006.

NOTE: Due to a potential conflict of interest stemming from his employment with the Building Industry Association of the Delta, Council Member Beckman abstained from discussion and voting on this matter and vacated his seat at the dais at 7:59 p.m.

George Morrow, Electric Utility Director, reported that the City presently has four substations that serve existing City boundaries and will accommodate a certain amount of infill and growth. At some point, the substation infrastructure will be stressed, and the City will be required to expend funds for new substations, for which these costs have not been built into the rate structure. The concept is to assign the costs to those who cause the impact in order to begin accruing funds until such time as a substation is needed. Staff is recommending the adoption of a substation transmission system charge that would apply to new development outside of the current City boundaries (as of August 1, 2006). A new substation would cost \$7.8 million. Staff is proposing that an escalator be built into the fee structure in order to be current with escalating prices. A typical residential home would be assessed a one-time fee of \$820 that would be paid through the developer. For the small number of large manufacturing customers, the one-time charge would be \$164,000. Mr. Morrow did not anticipate the funds to grow to \$7.8 million by the time a new substation was needed and stated that, if additional funds were necessary, the City would need to consider alternatives to pay for it (i.e. issue bonds or increase rates).

Mayor Pro Tempore Johnson questioned if the City would have enough capacity to accommodate Delta College, to which Mr. Morrow stated that the City currently has two

substations in that part of town and he did not see the need for another one due to this additional demand. Mr. Morrow stated that the need to build a new substation in the next three to five years would most likely be to construct additional transmission lines to another point in the network. For example, if the Lodi project is built near White Slough, Electric Utility could wrap in the transmission lines to that project, which would integrate it into the grid; thereby, requiring the necessity for a new substation to terminate those lines. There is presently a site on Kettleman Lane to the west of Lower Sacramento Road, which the City owns and has begun preliminary work.

Further discussion ensued regarding new development versus existing customers and who benefits and pays for the substation charges. Mr. Morrow stated that, if the City has not accrued enough funds to pay for a substation for whatever reason (e.g. to interconnect to the west or to reliably serve a new project to the south), the customers will have to share in that cost until the City can accrue additional funds. Mayor Pro Tempore Johnson questioned how those who fronted the cost would be credited back the money, to which Mr. Morrow responded that he would return with scenarios to address this issue. Mr. King pointed out that, without this substation charge, the ratepayers would pay 100% for new substations costs.

In response to Council Member Hansen, Mr. Morrow stated that a substation takes roughly two years to build. Mr. Hansen believed that Lodi's slow growth rate of 0.3% did not warrant the need for a new substation within three to five years, to which Mr. Morrow clarified that the need for a new substation in that timeframe would not be tied solely to growth; it would also be for the termination of the circuits to the west and the need for interconnection. In addition, Mr. Morrow stated that growth also comes from new retail or commercial businesses (e.g. Blue Shield, Wal-Mart Supercenter, etc.). Mr. Hansen suggested that the reasons be made clear as to the need for a new substation, whether it is due to existing customers (i.e. more appliances in homes, more electricity being used, etc.) or tied strictly to growth.

In response to Mayor Hitchcock, Mr. Morrow confirmed that this escrow account will be insufficient for the first substation needed, as there will not be adequate time to build up the funds.

Council Member Mounce stated that she did not want to see the money collected for this purpose borrowed for any other need, as was done with the sewer and water funds collected to repair the aging sewer system.

Mayor Hitchcock stated that the City did not borrow and use those funds inappropriately; it was borrowed because not enough money had been collected in the impact fee account. Ms. Hitchcock expressed concern that the City was not putting enough into this account, which would require borrowing from other impact fees down the line.

Council Member Mounce believed that, if a promise is made to the public to build something or provide a service, the City should have the money available when the time comes and not continually borrow from one line item to another to make the cash flow.

Council Member Hansen clarified that the City borrowed money from the water and sewer infrastructure replacement fund to deal with the cost of the PCE/TCE clean up and litigation; Council's other option was to implement a hefty rate increase. It was a necessary decision to address the clean up and abatement order from the Regional Water Quality Control Board, and the Council should have the ability to balance the revenues and expenses to cover the costs of those matters with which the City is faced.

Hearing Opened to the Public

- Kevin Sharrar, Executive Director of the Building Industry Association (BIA) of the Delta, expressed his appreciation to the Council for providing an opportunity for the BIA to meet with staff regarding this issue.

Public Portion of Hearing Closed

MOTION / VOTE:

The City Council, on motion of Council Member Hansen, Johnson second, deferred the subject public hearing in order to give staff the opportunity to meet with interested parties and return to Council at a future date. The motion carried by the following vote:

Ayes: Council Members – Hansen, Johnson, and Mounce

Noes: Council Members – Mayor Hitchcock

Absent: Council Members – None

Abstain: Council Members – Beckman

NOTE: Council Member Beckman returned to his seat at the dais at 8:45 p.m.

- I-3 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hitchcock called for the public hearing to consider introducing an ordinance amending Chapter 13.20, "Electrical Service," by amending Section 13.20.225, Schedule NEM (Net Energy Metering), and adding Section 13.20.227, Schedule CEM (Co-Energy Metering Rider), both applicable to qualified, customer-installed solar and wind generation, to become effective on November 1, 2006.

Electric Utility Director Morrow reported that state law requires the City to purchase wind and solar energy from its customers. Net metering is for smaller installations at ten kilowatts (KW) or less, and co-metering is for installations larger than ten KW. There is one meter for net metering, which measures both the power the City delivers to the customers and the power delivered back to the City from solar/wind. As a result, the customer is paid the full retail rate for the energy provided to the City. On the pricing side, the City sells at full retail rate and, under net metering, buys at the full retail rate. The alternative to buying solar/wind energy is the wholesale energy price market, which presently is half that price. The City is paying twice what the alternative is; however, the law is clear that it cannot do anything about that up to 10 KW. For those larger than 10 KW, the City can offer co-energy metering, which utilizes two meters: one sends electricity to the customer and is measured separately; the other measures the energy coming in from the solar/wind. Staff is proposing that, instead of buying the solar/wind from the large installations at the same price the City is selling it, the City pay an amount equal to the wholesale market price. State law provides that public benefit charges, which is 2.85% of customer charges, are non-by-passable and the rate has been cleaned up to be consistent with the law. Additionally, state law provides that utilities do not have to buy electricity over and above what it is selling for; therefore, if, after a 12-month period, a customer has installed larger generation than what it is purchasing from the City, the utility is not required to buy it; it is turned over to the utility. Currently, the law provides that net metered customers can pay their bills once a year; however, co-metered customers can be required to pay monthly, which has been included in the proposal. Electric Utility is required to offer this program for 2.5% of the peak load (or 3,500 KW), and presently, the City has approximately 150 KW of generation participating or scheduled to be on-line soon. At 2.5% of the peak load and without this co-metering tariff, the City could lose \$750,000 per year.

In response to Council Member Mounce, Mr. Morrow stated that the City is allowed to pass on the price of the meters to the customers, which cost under \$100 each.

In response to Mayor Hitchcock, Mr. Morrow stated that he believed the City would not exceed 2.5% of the peak load.

Hearing Opened to the Public

None.

Public Portion of Hearing Closed

MOTION / VOTE:

The City Council, on motion of Council Member Hansen, Mounce second, unanimously introduced Ordinance No. 1786 amending Chapter 13.20, "Electrical Service," by amending Section 13.20.225, Schedule NEM (Net Energy Metering), and adding Section 13.20.227, Schedule CEM (Co-Energy Metering Rider), both applicable to qualified, customer-installed solar and wind generation, to become effective on November 1, 2006.

RECESS

At 8:59 p.m., Mayor Hitchcock called for a recess, and the City Council meeting reconvened at 9:11 p.m.

J. COMMUNICATIONS

J-1 Claims filed against the City of Lodi – None

J-2 Appointments – None

J-3 Miscellaneous

- a) Interim City Clerk Perrin presented the cumulative Monthly Protocol Account Report through August 31, 2006.

K. REGULAR CALENDAR

K-1 "Status of Code Enforcement regarding mobile food vendors"

Mayor Hitchcock announced that Araseli Del Castillo would serve as the Spanish translator for anyone requiring assistance with their comments.

Joseph Wood, Community Improvement Manager, reported that on July 19, Council directed staff to proceed with an enforcement project using existing City codes. Code Enforcement staff commenced with the enforcement program on August 7, which was broken into three phases.

Phase 1

Notices were sent listing the general land use requirements; primarily, that business is to be conducted within an enclosed building. Additionally, staff identified other land use, safety, and nuisance issues that were particular to each site and informed vendors that the regulations prohibit them from operating on private property. Copies of pertinent regulations were provided to the vendors that apply to operations moving to the public right of way, which includes the following requirements: ten-minute restriction at one location; must move at least 100 feet from original location; no traffic hazard be created; and remain 300 feet away from a school site and 100 feet away from intersections controlled by a four-way stop or traffic signal. Further, staff informed vendors of the code section allowing for a special permit issued by the City Council that would allow them to remain in one location

on the public right of way for longer than ten minutes, similar to what was issued to Lou Fugazi for his hot dog stand in front of the U.S. Post Office, as well as the vendors at the street faire and farmers markets. Phase 1 generated many inquiries and concerns from the vendors; therefore, Code Enforcement provided a memo to the vendors clarifying the enforcement action (filed), which was printed in both English and Spanish, and held a meeting with the vendors, various customers, and representatives from the Lodi District Chamber of Commerce and its Hispanic Business Committee to further address their concerns. At the conclusion of the meeting, the vendors made it clear that they would request Council reconsider this matter. The Chamber Hispanic Business Community has expressed support for the vendors, as well as support for the City's concerns regarding sanitation, traffic, and safety issues, and has expressed its desire to work together to resolve these issues. Code Enforcement staff has received feedback from some local restaurants regarding the impact of mobile food vendors; some feel there is no direct competition, while others do. Of the first five locations that received notices of violation along Cherokee Lane, three are in compliance and two are not. Staff does not intend to follow up with a compliance inspection until all vendors are operating under the same conditions.

Phases 2 and 3 – Phases 2 and 3 are pending at this time.

Staff has noticed an increase in the number of complaints regarding pushcart vendors that are operating on streets and sidewalks, as well as complaints regarding other itinerant merchants. Mr. Wood pointed out that through the various meetings and discussions with the vendors it has been made clear that the enclosed building requirement would be applied to all of the vendors.

In response to Mayor Hitchcock, Mr. Wood stated that the enclosed building requirement was the only regulation the City had to directly address this type of operation on private property. Community Development Director Hatch added that this is a long-standing code section that was originally created to address mobile food vendors who visited construction sites in the industrial areas of town for a short duration of time before moving on to another location. The enclosed building requirement was a policy decision of Council at the time to address the itinerant merchants selling goods in the commercial areas. Over time, however, mobile trucks have begun to set up at permanent locations, which have constituted a new type of business model for which this code was not written. Staff, therefore, has reverted back to the original language in the municipal code. Council has the option to amend existing code to allow that type of service or enforce the current code section. Code Enforcement staff has begun the process of researching ordinances from other communities.

In response to Council Member Hansen, Mr. Wood explained that there is a municipal code section that allows for a special permit to be issued by the City Council to allow a vendor to operate from a fixed location on public property for longer than ten minutes. Mr. Hatch added that this provision is for location on public property; not private property.

In response to Mayor Pro Tempore Johnson, Mr. Wood stated that Code Enforcement receives complaints from residents on a regular basis, particularly at the Lodi Improvement Committee meetings, regarding unsightly conditions, encroachments into the public right of way, traffic impacts, garbage, and close proximity to residential areas.

Council Member Beckman questioned what the criteria was for approving a special permit to operate on public property, to which Mr. Wood responded that there is no clear criteria; however, the applicant must submit a proposal to Council, and, assuming it is approved, Public Works would issue an encroachment permit that would meet the City's insurance and liability requirements. Mr. Hatch added that these permanent vendors provide vitality and add a streetscape presence to the downtown, thereby, promoting a pedestrian-oriented experience. There was no timeframe associated with the issuance of the special permit,

with the exception of those participating in the street faire and farmers markets. Mr. Beckman expressed concern that this is a double standard of enforcing the ordinance for some, yet permitting others based upon the impulse of the Council.

PUBLIC COMMENTS:

- David LeBeouf stated that he represents approximately 30 mobile food vendors who are requesting that Council stay the code enforcement actions and that it review and revise the laws with respect to mobile food vendors. He stated that the ten-minute rule alone prohibits vendors from conducting their business as it typically takes up to 25 minutes to set up and another 30 to 40 minutes to serve customers. Mr. LeBeouf stated that he has served on committees for the cities of Stockton and Sacramento and assisted in updating their ordinances, which were antiquated and similar to Lodi's regulations, and he suggested the City contact these organizations to request copies. Further, Mr. LeBeouf explained that there is an alliance in Stockton, which is a large group of mobile food vendors that self enforce violations of the ordinance. He suggested that the City contact the Stockton City Attorney regarding the make up and functions of the alliance. Stockton's ordinance has been in effect for 16 to 18 months.

In response to Mayor Pro Tempore Johnson, Mr. LeBeouf stated that Modesto has a mobile food vendor ordinance; however, it is unique in that it has a specific area for vendors.

In response to Council Member Beckman, Mr. LeBeouf stated that case law prohibits cities from preventing mobile food vendors from operating on public right of way as it would be a restraint of trade; however, cities are obligated to provide for public health, safety and welfare. City Attorney Schwabauer disagreed with Mr. LeBeouf's characterization of the case, stating that it was a function of being pre-empted by the California Vehicle Code. Mr. LeBeouf clarified that the city of Stockton allows vendors to operate for three hours on the public right of way and it varies regarding private property, depending on the zoning.

Council Member Mounce questioned if the Stockton ordinance required mobile vendors to obtain the required licenses and certificates, to which Mr. LeBeouf replied in the affirmative.

- Andres Castro stated that ten minutes in one location is insufficient and does not allow enough time to reach the temperature required to properly cook food.
- Ray Crow represented himself as a consumer and stated that he has eaten at every mobile food vendor in Lodi as they offer a great low-cost meal. He questioned why the hot dog stand in front of the U.S. Post Office was not required to have restroom facilities, as it was pointed out that the vendors are so required. The elimination of mobile food vendors would not only negatively impact the vendors, but would also hurt established businesses who receive rent or income from those businesses that locate on their properties.
- Maria Lopez, representing Tacos Ochoa #1 and #2, stated that Community Development staff informed vendors at a meeting that the current enforcement action was a result of complaints received from the community and by Council Member Mounce. The vendors are concerned that they will be put out of business and expressed concern that there was no warning or communication between the City and the vendors. She further addressed some of the concerns in the September 8 memo from Community Development staff and stated that the vendors are required to secure the necessary permits, licenses, and certifications. She stated that she owns the commercially-zoned property on 310 Main Street, from which one of her taco trucks operates, and she questioned why she should be made to obtain a special permit when she owns the property. She requested that Council work with the vendors to address the concerns and to allow them to continue to operate.

Council Member Mounce explained that she brought this issue forward in order to respond to the many complaints she was receiving from east side residents and because of personal experiences she had that made her question the health and safety of these types of businesses. She apologized for the manner in which Council addressed this matter and felt confident that the City would find a solution to best serve the vendors, customers, community, and City.

- Guillermo Ruiz (as translated by Ms. Del Castillo) expressed concern that the City was putting the vendors out of business and that they would not be able to support themselves.
- Antonio Gonzalez (as translated by Ms. Del Castillo) stated that the vendors make sure to pick up the trash left by customers; however, it is difficult to do so when they have to move every ten minutes.
- Mirna Ruiz, chair of the Chamber of Commerce Hispanic Business Committee, stated that she operated a mobile food truck in the past and that the ten-minute period is unrealistic. The mobile food vendors offer a reasonably priced meal that is authentic, convenient, and economical to those who do not want to eat at a restaurant. The vendors are contributors to the community as business owners and community members who want to provide for their families. She requested Council grant special permits or another solution that would enable them to remain in business.

Council Member Hansen stated that he was in favor of staying the code enforcement actions until the City arrived at a solution, but he did not want to give a false impression that the City would issue special permits or exempt people from their own property. Mr. Hansen expressed interest in pursuing the idea of an alliance with rules that would allow it to operate and self police, which would provide a relief to the City.

- Luis Magaña (as translated by Ms. Del Castillo) expressed concern about the enforcement actions and stated that many of these people have worked a long time, they worked in the fields, and did not come here to work in taco trucks; however, they all want to better themselves and help this community. He hoped Council would make it possible for the vendors to continue to operate.

Mr. King stated that Council provided direction to move from a complaint-driven code enforcement program to a proactive program; however, it is difficult to enforce parking violations, banners, signs, etc., while un-permitted businesses such as the mobile food vendors are allowed to operate.

- Alberto Marquez expressed concern regarding the traffic hazards created by mobile food vendors, as well as potential health and safety issues, and requested that Council take this into consideration if it decides to allow these types of businesses.
- Jose Juarez (as translated by Ms. Del Castillo) thanked Council for its willingness to reconsider this matter and shared some of the difficulties of owning and operating a mobile food vehicle.
- Rosa Harnak, representing the Lodi District Chamber of Commerce, stated that the board will be discussing this issue at its next meeting on September 25. She further commented that many of these businesses were self funded and started without the assistance of loans.
- Espiranza Ortiz (as translated by Ms. Del Castillo) stated that her business was one of the first five who received a notice to stop and she complied immediately, after which she sold one of her two lunch wagons in response to this code enforcement action. Two of her family members are currently unemployed due to this action. She stated that garbage is always collected after the customers leave and every attempt is made to keep the area clean.

Mayor Hitchcock applauded Ms. Ortiz for complying with the law, and Council Member Hansen expressed regret that this had to happen to her and her family.

MOTION:

Council Member Hansen made a motion, Hitchcock second, to stay all code enforcement efforts on mobile food vendors and begin the process to establish rules to meet the needs of the City and the community.

DISCUSSION:

Council Member Mounce also expressed interest in pursuing the idea of an alliance, as well as researching Modesto's ordinance, which would create a hub for the mobile vendors. Ms. Mounce read a prepared statement in Spanish.

Mayor Pro Tempore Johnson stated that Council has done a disservice to staff as the July 19 minutes show that clear direction was given to begin this code enforcement action. He was not opposed to reversing the direction and revisiting the matter, but he requested that the issue of itinerant merchants be included in future discussions.

Council Member Beckman asked Council Member Mounce what she would like to see included in the proposed ordinance, to which Ms. Mounce stated that her concerns were that the units were not self contained, the electrical wires presented a safety hazard, and that there is an impact to the neighbors when the vendors are located adjacent to a residence. She would like to see this issue go before the Planning Commission for review. She was pleased to see that the businesses are required to obtain all necessary permits, licenses, and certifications.

Council Member Beckman stated that the Council owes an apology to the staff, vendors, and customers for its handling of this matter and he stated he would vote against the motion.

VOTE:

The motion carried by the following vote:

Ayes: Council Members – Hansen, Johnson, Mounce, and Mayor Hitchcock
Noes: Council Members – Beckman
Absent: Council Members – None

Ms. Del Castillo translated into Spanish the above action taken by Council.

NOTE: Mayor Pro Tempore Johnson left the meeting at 10:56 p.m.

K-2 “Adopt resolution approving program guidelines of the Revolving Loan Fund for the City of Lodi's Economic Development Jobs Program”

Joseph Wood, Community Improvement Manager, stated that, as a Community Development Block Grant (CDBG) funded program, economic development is recognized as an eligible activity for job creation for persons of low to moderate income. The Revolving Loan Fund (RLF) program would incorporate one to two loans per year, with the idea of providing additional CDBG funding each year to keep it going; although, the concept is that the program would become self sufficient at some point once funds are returned to the program. Mr. Wood highlighted the following program elements:

- No minimum or maximum loan amount.
- The job creation criteria would follow federal guidelines of one low or moderate income job for each \$35,000 loaned.
- For every dollar loaned, there would be an investment of \$3 by the business.
- The loan term is three to seven years.
- Interest rate would be near market rate.
- 100% collateral on the funds loaned with no unsecured loans being considered.

- Loan fees would be .5% up to 3% of the loan amount depending upon the various aspects of the loan.
- Applicant would pay costs associated with special services in order to qualify for the underwriting process.
- No pre-payment penalty and an option for payment deferral.
- Eligible uses would include infrastructure, off-site improvements, and land costs, with the understanding that building and construction costs would trigger the Federal prevailing wage requirements. Ineligible uses are those projects that do not meet the purpose of the program, including costs incurred prior to the submittal of the loan, the refinancing of existing debt, those located outside of Lodi, and any project that created a conflict of interest for an elected or appointed official or an employee. Additionally, projects that involve the relocation of residents or businesses trigger federal regulations regarding relocation assistance and would not be considered.

The loan application review would be handled in house by the City Manager's Office and Community Development with a qualitative review to determine if it meets the guidelines and the purpose of the program. It would then move to the program operator for a quantitative review, for which staff is proposing to utilize the San Joaquin County RLF Program as it has been in operation for a number of years and is well versed in these types of loans using federal funds. From this review, a credit memo would be sent to a loan advisory committee, made up of 3 to 5 local banking and business professionals and selected from a pool of 10 to 12 recommended by the Council. The committee would then make a recommendation to the City Manager that would set forth the terms and conditions of the loan, after which the City Manager would have the final decision on the approval or denial of the loan. If the loan is approved, the loan documents would be prepared, and Farmers and Merchants Bank has agreed to participate with this process. Following the closing, the San Joaquin County RLF Program would handle the program servicing and monitoring, payment processing, delinquent accounts, reporting and monitoring, and verification of income for job creation.

In response to Mayor Hitchcock, Mr. Wood stated that the loan document includes standard language that anything from the business can be used as collateral and there would need to be a value given to the assets used as collateral to match the amount of funds loaned.

PUBLIC COMMENTS:

- Kevin Stevens questioned why the City wishes to get into the loan business, how many City employee jobs would be created to handle this loan program, and why the Council is not involved in the final decision-making process. He pointed out that the San Joaquin County Board of Supervisors makes the final decision on the loans in the San Joaquin County RLF Program.

Mr. King responded that this program represents opportunities for the City to stimulate businesses, create jobs for the community, improve the tax base, and benefit the targeted income group. The funds are paid back and reprogrammed to use again, which allows the City to retain the value of federal funds into the future versus one-time allocations. He did not anticipate that this program would be any more burdensome upon staff than administration of any other typical CDBG grant program. In regard to Council involvement, the primary concerns are the issues of meeting the Brown Act and the Public Records Act requirements and the fact that personal credit information would remain confidential with the loan committee as opposed to the Council.

Carlene Bedwell, Managing Principle of Applied Development Economics and the City's consultant on this program, agreed that the final decision on loans through San Joaquin County RLF Program are made by the County Board of Supervisors; however, it is structured in that the loan committee has the majority of the authority with the final decision resting with the Board in a somewhat automatic action.

Council Member Hansen questioned if this program receives automatic funding every year or would Council still have the opportunity to weigh this program against other community projects, to which Mr. King responded that the funding for this program has been allocated for one year only. Staff would like to evaluate the program this first year.

In response to Mayor Hitchcock, Mr. Wood confirmed that the San Joaquin County RLF Program has agreed to process the first loan throughout the entire term pro bono in order to determine a reasonable fee for servicing the program.

Ms. Bedwell stated that the benefit of going with the County RLF Program initially is that it has the processes and systems in place and it believes it can easily add additional loans to those it already has in place. Private firms can charge anywhere from 1% or \$9 for every monthly statement, and she believed the fee determined by the County RLF Program would be very reasonable. She added that there is CDBG administrative money available for use in monitoring compliance.

Mayor Hitchcock expressed support for approving the first two loans; however, she preferred that Council act as the final authority in approving the loans.

MOTION / VOTE:

The City Council, on motion of Mayor Hitchcock, Hansen second, adopted Resolution No. 2006-177 approving program guidelines for the Revolving Loan Program, which is the key element of the Community Development Block Grant funded Economic Development Jobs Program, for the first two loans and adding a component for final approval by the City Council. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Mounce, and Mayor Hitchcock

Noes: Council Members – None

Absent: Council Members – Johnson

VOTE TO CONTINUE WITH THE REMAINDER OF THE MEETING

The City Council, on motion of Mayor Hitchcock, Mounce second, unanimously voted to continue with the remainder of the meeting following the 11:00 p.m. hour.

K. REGULAR CALENDAR (Continued)

- K-3 “Approve expenses incurred by outside counsel/consultants relative to the Environmental Abatement Program Litigation and various other cases being handled by outside counsel (\$130,186.10)”

City Attorney Schwabauer reviewed expenses as were outlined in the staff report (filed).

MOTION / VOTE:

The City Council, on motion of Council Member Mounce, Beckman second, approved the expenses incurred by outside counsel/consultants relative to the Environmental Abatement Program Litigation and various other cases being handled by outside counsel in the amount of \$130,186.10, as detailed below, by the following vote.

Ayes: Council Members – Beckman, Hansen, Mounce, and Mayor Hitchcock

Noes: Council Members – None

Absent: Council Members – Johnson

Folger Levin & Kahn - Invoices Distribution

Matter No.	Invoice No.	Date	Description	Water Acct. Total Amount
8002	96861	7/30/2006	People v. M&P Investments	\$ 22,047.56
				\$ (650.00)
8003	96862	7/30/2006	Hartford Insurance Coverage Litigation	\$105,045.76
				\$ (2,840.00)
8008	96863	7/30/2006	City of Lodi v. Envision Law Group	\$ 5,062.38
	13606	7/30/2006	Keith O'Brien/PES Environmental, Inc.	\$ 225.00
	6268	6/30/2006	Peter Krasnoff, West Environmental Service	\$
<u>292.50</u>				
				\$129,183.20

Kronick Moskovitz Tiedemann & Girard - Invoices Distribution

Matter No.	Invoice No.	Date	Description	Total Amount	Distribution	Water Acct.
11233.019	227478	08/25/06	Claims by Environmental Consultants	\$ 267.70	100351.732	267.70
11233.027	227478	08/25/06	Citizens for Open Govt. v. City of Lodi	\$ 107.95	107.95	
11233.029	227478	08/25/06	AT&T v. City of Lodi	\$ 627.25	627.25	
				<u>\$1,002.90</u>	<u>735.20</u>	<u>267.70</u>

L. ORDINANCES

None.

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 11:30 p.m.

ATTEST:

Jennifer M. Perrin
Interim City Clerk

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, OCTOBER 4, 2006**

EXHIBIT C

C-1 CALL TO ORDER / ROLL CALL

The City Council Closed Session meeting of October 4, 2006, was called to order by Mayor Hitchcock at 5:07 p.m.

Present: Council Members – Beckman, Hansen, Johnson, Mounce, and Mayor Hitchcock

Absent: Council Members – None

Also Present: City Manager King, City Attorney Schwabauer, and Interim City Clerk Perrin

C-2 ANNOUNCEMENT OF CLOSED SESSION

- a) Conference with Blair King, City Manager, and George Morrow, Electric Utility Director (Acting Negotiators), regarding offers by the city of Roseville and the Turlock Irrigation District to acquire a portion of the City's entitlement, by purchase or lease, in the CT1 Project, pursuant to Government Code section 54956.8
- b) Actual litigation: Government Code §54956.9(a); one case, City of Lodi v. Michael C. Donovan, an individual; Envision Law Group, LLP, et al., San Francisco, Superior Court, Case No. CGC-05-441976
- c) Actual litigation: Government Code §54956.9(a); one case; Hartford Accident and Indemnity Company, et al. v. City of Lodi, et al., Superior Court, County of San Francisco, Case No. 323658
- d) Actual Litigation: Government Code §54956.9(a); one case; People of the State of California; and the City of Lodi, California v. M & P Investments, et al., United States District Court, Eastern District of California, Case No. CIV-S-00-2441 FCD JFM

C-3 ADJOURN TO CLOSED SESSION

At 5:07 p.m., Mayor Hitchcock adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 7:00 p.m.

C-4 RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 7:10 p.m., Mayor Hitchcock reconvened the City Council meeting, and City Attorney Schwabauer disclosed the following actions.

Items C-2 (a), (c), and (d) were direction only; no final action.

Item C-2 (b) was discussion only.

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of October 4, 2006, was called to order by Mayor Hitchcock at 7:10 p.m.

Present: Council Members – Beckman, Hansen, Johnson, Mounce, and Mayor Hitchcock

Absent: Council Members – None

Also Present: City Manager King, City Attorney Schwabauer, and Interim City Clerk Perrin

B. INVOCATION

The invocation was given by Father Rick Matters, St. John the Baptist Episcopal Church.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Hitchcock.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 Awards – None

D-2 (a) Mayor Hitchcock presented a proclamation to Diane Amaral, Arts Coordinator, proclaiming the month of October 2006 as “National Arts & Humanities Month” in the City of Lodi. Ms. Amaral announced that the 4th annual Arts Open House will be held on October 5 at Hutchins Street Square from 6:30 to 8:30 p.m., at which visitors can meet local artists, watch live demonstrations, and enjoy special displays. Friday, October 6 is the First Friday Art Hop from 6:00 to 9:00 p.m. at various locations throughout downtown Lodi, and on October 26, the Lodi Arts Project Fund and the Knowlton Gallery will serve as hosts for the Americans for Arts Emerging Arts Leader Creative Conversations at the Knowlton Gallery.

D-2 (b) Mayor Hitchcock presented a proclamation to Joelle Gomez with the Women’s Center of San Joaquin County proclaiming the month of October 2006 as “Domestic Violence Awareness Month” in the City of Lodi.

D-3 (a) “Presentation of Certificate of Recognition to Lodi Improvement Committee member, Joseph Spinelli” was ***pulled from the agenda***.

D-3 (b) Interim City Clerk Perrin gave an update on the Centennial activities being planned for 2006. JoEllen Flemmer, representing the Lodi Rotary Club, provided information regarding the upcoming Centennial event, Oktoberfest, which will be held on October 27 at the American Legion Hall from 5:30 to 11:00 p.m. The event, sponsored by the three Rotary Clubs, will include a local accordion player and German music, traditional German food, beer, and wine, and demonstrations of traditional German dancing. Tickets are \$10 in advance and \$15 at the door and can be purchased at the Lodi Longs Drug Stores, Lakewood Drug Store, and the Bank of Agriculture and Commerce.

E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Council Member Hansen, Mounce second, unanimously approved the following items hereinafter set forth **except those otherwise noted**:

E-1 Claims were approved in the amount of \$5,092,868.57.

E-2 The minutes of August 2, 2006 (Regular Meeting) and September 26, 2006 (Shirtsleeve Session) were approved as written.

E-3 Approved the plans and specifications and authorized advertisement for bids for the Lodi Avenue at Stockton Street and Elm Street and Ham Lane Traffic Signal and Striping Modification Project; and adopted Resolution No. 2006-178 approving installation of no-parking zones for left-turn lanes on Lodi Avenue at Stockton Street.

E-4 Adopted Resolution No. 2006-179 awarding the purchase of 27 polemount and 5 padmount transformers to ERMCO, Inc., of Dyersburg, Tennessee, the bidder whose proposal and equipment meet City of Lodi specifications and whose transformers are expected to yield the lowest overall life-cycle costs, in the amount of \$83,851.06.

E-5 Accepted improvements under “White Slough Water Pollution Control Facility Year 2004 Improvements Project” contract and received notification of Contract Change Order.

E-6 Adopted Resolution No. 2006-180 authorizing the City Manager to execute Communications Equipment and Property Joint Use Agreement with San Joaquin County.

- E-7 Adopted Resolution of Intention No. 2006-181 to Vacate a 16-foot easement at 1029 South Sacramento Street (APN 045-260-06) and an 11-foot easement at 1028 South School Street (APN 045-260-07) to enable the construction of a residential 11-lot subdivision development, "Interlake Square"; referred the matter to the Planning Commission; and set public hearing for November 15, 2006.
- E-8 Authorized the Treasurer to enter into agreement with Farmers and Merchants Bank of Central California for the issuance of a City credit card for City Clerk, Randi Johl.
- E-9 "Receive and file recommended design guidelines for the Eastside Mobility and Access Plan" was **removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar.**
-

ACTION ON ITEM REMOVED FROM CONSENT CALENDAR

- E-9 "Receive and file recommended design guidelines for the Eastside Mobility and Access Plan"

PUBLIC COMMENTS:

- Joe Petersen, speaking on behalf of the old Jim Minor Carpets building, stated that he supports the plan; however, he requested that it be corrected to reflect that the property located at 17 East Lodi Avenue is not an underutilized property as the maps on pages 12, 30, and 34 denote. He believed that it may once have been underutilized prior to his purchase of the property, but he pointed out that it is the only property on Lodi Avenue with trees, creative and lively signage, and landscaping. Additionally, the business is a solid revenue source for the City, and he requested that the plan be corrected. Mr. Petersen submitted photos of the property located at 17 East Lodi Avenue (filed).

City Manager King suggested that Council incorporate an addendum to note that the property located at 17 East Lodi Avenue is at this time in active use and contributing to the tax base of the City.

In response to Mayor Hitchcock, Peter Pirnejad, Planning Manager, stated that the survey was done visually in February 2006 by a walking tour of the area and information obtained from Geographical Information Systems records.

MOTION / VOTE:

The City Council, on motion of Council Member Mounce, Hansen second, unanimously received and filed the recommended design guidelines for the Eastside Mobility and Access Plan, with incorporation of an addendum stating that the property located at 17 East Lodi Avenue is in active use and contributing to the tax base of the City of Lodi.

F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Ray Crow, representing the Lodi District Chamber of Commerce, announced that it, along with Lodi Gas Storage, F&M Bank, and Applied Office, will host the annual Mayor's State of the City Address. The event will take place on October 12 at Hutchins Street Square at 11:30 p.m. The Mayor will give a visual review of Lodi's past 100 years, a recap of how the City has celebrated its 100 year Centennial celebration, and a glimpse into the future 100 years of Lodi. Further, Mark Chandler with the Lodi-Woodbridge Winegrape Commission and Joe Harrington from Lodi Memorial Hospital will give brief presentations. Tickets are on sale at the Lodi Chamber of Commerce.
- Nancy Beckman, Director of Lodi Conference and Visitors Bureau (LCVB), announced that the LCVB will hold its 5th annual Taste of Lodi event at the Wine and Roses Hotel and Restaurant on Sunday, October 8 from 1:00 to 5:00 p.m. The wine and food tasting event will showcase 41

wineries and 18 restaurants and will include music, wine tasting seminars, and cooking demonstrations. Ms. Beckman presented each Council Member with a pair of complimentary tickets and encouraged anyone interested in attending to purchase tickets at the LCVB office or on-line at www.tasteoflodi.com. Tickets are \$40 in advance and \$50 at the door. Further, Ms. Beckman reported that she recently met with a writer from the California State Automobile Association's *Via* magazine who will be writing an article on Lodi, which will appear in the January/February 2007 issue.

- Steve Dutra announced that on Saturday, October 14 Phase 2 of a Community Development Block Grant funded project to plant trees and flowers at 12 locations on the east side of the community will be implemented. Further, Mr. Dutra introduced members in the audience from Tree Lodi and informed the public that it will hold its first annual fall 2006 tree planting program, which is a joint project between the Lodi Improvement Committee (LIC), Tree Lodi, and Solutions. The two goals of Tree Lodi for the fall tree planting program include: 1) planting 100 additional shade trees to the Lodi urban forest and 2) developing a sense of stewardship of the newly planted trees by the property owners. Tree Lodi will make applications available at the following locations: Parks and Recreation Department, Community Development Department, Finance Department, and Weigum's Nursery. The application details the responsibilities of the future tree owner, Tree Lodi, and LIC. The deadline for submitting applications is October 27, and anyone interested in the program was encouraged to contact Tree Lodi at 369-4558.

G. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- Council Member Hansen reported that he attended the Northern California Power Agency (NCPA) annual conference last week and that compelling information was presented regarding global warming and greenhouse gases. He stated that Assembly Bill 32 was recently signed by Governor Schwarzenegger making the State of California the first state in the nation to enact mandatory greenhouse gas emissions regulations. NCPA has a great partnership with the California Municipal Utilities Association (CMUA) and the Northwestern Public Power Association, all of whom have been working closely together on various legislative efforts with a good degree of success. Senate Bill 107 regarding the State's renewable portfolio was signed into law, and because of their effort, the bill's sponsor worked to ensure local control. Additionally, the Federal Energy Regulatory Commission (FERC) issued an order approving the California Independent System Operator's (CAISO) market design technology update. Because of this group's effort in encouraging 14 U.S. senators to express their concerns about the regional impact of the proposal, FERC is requiring the CAISO to provide long-term transmission rights and fully test those prior to implementation. These are two huge victories for local energy providers, which prove the value of lobbying both in Washington D.C. and California. Further, NCPA's Law and Regulatory Committee will be meeting in November to develop a strategic plan, which will be presented to NCPA in establishing the goals for 2007.
- Mayor Pro Tempore Johnson commented on a quote in the newspaper from Mayor Hitchcock regarding zero-based budgeting and suggested that the City schedule a meeting to discuss this issue. Zero-based budgeting begins the year at zero, and each item in the budget must be justified. He stated that he was not advocating this method for every year because it is time and labor intensive; rather, he suggested the City consider a zero-based budget next year and then continue on a four- or five-year cycle.

Both Mayor Hitchcock and Council Member Mounce expressed an interest in pursuing this suggestion.

- Council Member Mounce reported that Senate Bill 1210, which limits the power of eminent domain in California, was recently signed by Governor Schwarzenegger. The law implements procedural changes designed to give additional power to property owners, as well as provides changes to redevelopment law that could reduce the prospect of conflicts of interest or the use of eminent domain to take property in a redevelopment project area after blight in the project area has been remediated.

H. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

- City Manager King acknowledged Deputy City Clerk Perrin for the great job she has done in serving as the Interim City Clerk. He further announced that Ms. Perrin was selected as Employee of the Quarter in recognition of the significant amount of time and effort she has devoted to the City.

I. PUBLIC HEARINGS

None.

J. COMMUNICATIONS

J-1 Claims filed against the City of Lodi – None

J-2 The following postings/appointments were made:

- a) The City Council, on motion of Council Member Mounce, Hitchcock second, unanimously directed the City Clerk to post for the following vacancy:

Animal Shelter Task Force

Elaine Dornton Unspecified term limit

J-3 Miscellaneous – None

K. REGULAR CALENDAR

K-1 “Acceptance of donations from citizens, businesses, and service clubs to be used for various park amenities and improvements to Lodi Lake Park and other locations in honor of Lodi’s Centennial celebration”

Tony Goehring, Parks and Recreation Director, reported that Carol Meehleis has been actively seeking a variety of donations, goods, and services to be used for enhancement of local parks as part of the City’s Centennial celebration.

Carol Meehleis summarized the following donations she has received to date:

- Plaque to rededicate the Gilbeau petrified wood pieces at Lodi Lake Park, which were first brought to the lake in 1939 by the Gilbeau family.
- Improvements to the Japanese garden area at Lodi Lake by the youth group of the Buddhist Church of Lodi.
- Repair of the Rotary arbor and a new door for the Discovery Center at Lodi Lake.
- 20 new park benches set in concrete with a Centennial logo for a total of \$20,000. Mayor Hitchcock listed the contributors: Mike and Theresa Locke; Jim and Annette Murdaca; Tokay Development Inc.; the Bennett Family Foundation; the Mike Sinclair Family; the Meehleis Family; Larry and Georgianne Anderson; Lyons of Lodi; Theresa Williams; Millers Hot Dogs; Daryl and Opal Geweke; and the Kiwanis Club of Greater Lodi Morning Club.
- New boat house at Lodi Lake. With financial and in-kind services, these donators have volunteers to assist: Meehleis Modular Building, F&H Construction, Diede Construction, Vic Meyers, Don Garibaldi, The Kellogg Foundation, Vino Farms, Sheila Wishek, Mike Crete, Don Walters, and F&M Bank. The new boat house will be able to house the General Mills boat.

MOTION / VOTE:

The City Council, on motion of Council Member Mounce, Hansen second, unanimously accepted donations from citizens, businesses, and service clubs to be used for various park amenities and improvements to Lodi Lake Park and other locations in honor of Lodi’s Centennial celebration.

- K-2 "Presentation by Northern California Power Agency titled 'The Strength of Joint Action: Charting a Course for a Reliable and Clean Energy Future'"

With the aid of a PowerPoint presentation (filed), the following representatives from the Northern California Power Agency (NCPA) gave a report regarding its organization:

- Jim Pope, General Manager, reported on the following topics: membership; history and formation of NCPA; structure and role; value of NCPA's functions; and the importance of joint action.
- Jane Cirrincione, Assistant General Manager, Legislative and Regulatory Affairs, provided information on joint action and political influence; policy agenda; and grassroots advocacy and results.
- Bryan Bertacchi, Assistant General Manager, Generation Services, reported that he manages the power plants for the members of NCPA and reported on the resource mix; various projects including geothermal, combustion turbine, and hydroelectric; and development of new low-cost projects for members.
- Donna Stevener, Assistant General Manager, Finance and Administrative Services, provided information regarding the NCPA budget.

Mr. Pope reported that NCPA is preparing a report on all of the public benefits programs being offered in the various cities, which will be provided to the energy commission at the end of the year, and stated that three of Lodi's programs would be included: the Lodi Solar Schoolhouse Program; Lodi LivingWise Program; and the Heating, Ventilation, and Air Conditioning System Performance Test, which is the first program of this kind in California. He further stated that NCPA's success depends on the members and he encouraged Council Members to attend its upcoming meetings and events.

In response to Mayor Hitchcock, Mr. Pope stated that the citizens of Lodi have a huge resource and long-term investment in its Electric Utility Department, as it provides reliable service and reasonable rates.

Council Member Hansen stated that municipal utilities have a battle on its hands with investor-owned utilities who are attempting to get more of the share of the market and he was encouraged with the progress NCPA and member cities have made over the last year. Mr. Hansen requested an update on the proposed Lodi project, to which Mr. Pope reported that the 250 megawatt (MW) power plant would be located near the White Slough treatment plant. There is currently 150 MW signed up by the members, and staff is working to obtain the remaining 100 MW share of the facility in order to proceed with the licensing process. Mr. Bertacchi added that the plant would utilize some of the existing water supply from the City's nearby treatment plant and the infrastructure is already in place, both of which aid in reducing the costs for this project. The City would receive additional benefits from revenues above and beyond being a participating member in the project. Mr. Pope stated that an added benefit is its location 12 miles outside of Lodi, which may enable the City to interconnect its system into this project.

Mayor Pro Tempore Johnson suggested that new Council Members be given this presentation as a means to better understand NCPA and its role and functions.

MOTION / VOTE:

There was no Council action taken on this matter.

RECESS

At 8:51 p.m., Mayor Hitchcock called for a recess, and the City Council meeting reconvened at 9:04 p.m.

K. REGULAR CALENDAR (Continued)

- K-3 "Consider Jean Pagola's appeal of staff's decision to not remove two City trees behind 1823 Blackbird Court at City expense"

Public Works Director Prima reported that the City has a long-standing policy regarding City trees, which provides circumstances for removal. Requests are typically handled at the staff level and amount to 10 to 20 requests a year. The property owner, Jean Pagola, has requested two City trees located on Stockton Street, south of Kettleman Lane, be removed at the City's expense; however, the trees are healthy, which is contrary to City policy. The trees back up Mr. Pagola's home on Blackbird Court, and he believes the roots from the trees are negatively affecting his landscaping and rose bushes. Should the trees be removed, staff is recommending they be replaced at a cost of \$800. Staff is not in the position of approving this request given the healthy condition of the trees.

In response to Council Member Mounce, Mr. Prima stated that the trees being removed are Raywood Ash trees, and staff is recommending replacing them with Ginkos, which are slow growing trees with less of a root problem.

In response to Mayor Pro Tempore Johnson, Mr. Prima stated that no other area neighbors have complained of root problems. Discussion ensued regarding the tree policy and responsibility for payment.

In response to Council Member Hansen, George Bradley, Street Superintendent, stated that he and Arborist, Ray Fye, inspected the yard on a number of occasions and discovered small, insignificant roots, none of which would present a liability issue for injury or property damage. In addition, there was no damage to the walls or concrete; however, Mr. Pagola complained of a crack in his mow strip, which he did not witness as the strip was removed by the property owner prior to his inspection of the property. When a City tree causes damage, the City will reimburse the property owner for associated expenses.

In response to Mayor Hitchcock, Mr. Bradley agreed that extra watering for the roses may be attracting the surface roots from the trees. Mr. Bradley added that the trees provide shade, shield the fence, reduce graffiti, and serve as a sound barrier for traffic on that street.

PUBLIC COMMENTS:

- Jean Pagola explained the nuisances caused by the tree roots from the two trees behind his property. He expressed concern about replacing the trees and whether or not problems would arise from the root system of the new trees.

Council Member Beckman believed that, if the property owner wanted to remove the trees that are causing the nuisance, the request should be approved, with the cost being paid by the property owner.

MOTION #1:

Council Member Beckman made a motion, Hitchcock second, to allow the two trees behind the property at 1823 Blackbird Court to be removed and replaced at the property owner's expense.

DISCUSSION:

Mayor Hitchcock stated that she did not want to set a precedent by having the City pay to remove healthy trees.

Council Member Hansen stated he would not support the motion, as this comes down to a degree of opinion as to how much of a nuisance this is, and he would instead support a compromise of sharing the cost.

Council Member Mounce believed the City should remove and replace the trees with the costs shared between the property owner and the City.

VOTE:

The motion failed by the following vote:

Ayes: Council Members – Beckman and Mayor Hitchcock

Noes: Council Members – Hansen, Johnson, and Mounce

Absent: Council Members – None

MOTION #2 / VOTE:

The City Council, on motion of Council Member Hansen, Johnson second, authorized the removal and replacement of the two trees behind the property at 1823 Blackbird Court with a compromise of sharing the cost equally. The motion carried by the following vote:

Ayes: Council Members – Hansen, Johnson, and Mounce

Noes: Council Members – Beckman and Mayor Hitchcock

Absent: Council Members – None

- K-4 “Approve Downtown Lodi Business Partnership 2006-07 Annual Report, adopt Resolution of Intention to levy annual assessment, and set public hearing for October 18, 2006”

City Manager King explained the make up and purpose of the Downtown Lodi Business Partnership (DLBP) Business Improvement District (BID) and stated that the City collects the assessment; however, it is turned over to the DLBP. The public hearing to be set for October 18 would provide an opportunity for those assessed to protest the assessment.

Chuck Easterling, President of the Downtown Lodi Business Partnership (DLBP) Board of Directors, provided a report on the value and commitment of the DLBP, as well as an update on its events and activities. He stated that the DLBP has addressed and solved inequities within its benefit fee structure and is recommending the implementation of a 20% increase.

Jaime Watts, Executive Director of the DLBP, highlighted the following events, activities, and promotions of the DLBP:

- Served on many committees including Centennial Task Force, Destination Lodi, Media Day, and Shop Lodi Campaign, along with the Lodi District Chamber of Commerce.
- Attended ribbon cuttings, social events, and activities that have made the organization more visible.
- Revamped the Web site, including the addition of logos and links to other entities.
- Advertised on K-JOY, provided a program for merchants to participate in group rate advertisements, and built relationships in television, radio, and newspaper.
- Implemented the Centennial banner program and will kick off a new banner in January 2007.
- Instrumental in the Shop Lodi Campaign and developed the Friends of Downtown program, which allows people to become a member of the DLBP at a minimum cost of \$250 per year. These volunteers can bring their ideas to the table, serve on committees, list their business on the Web site, and have equal opportunities as regular members in promotional programs.
- Will refurbish the kiosks and are planning the Centennial parade of lights, Safe Halloween, and adding more retail promotions in an effort to increase business for our merchants.

Council Member Mounce stated that, at the presentation last year, she had recommended an outside auditor or licensed Certified Public Accountant (CPA) review of the financial statements; however, that has yet to be done. Additionally, this year's budget included errors in the financials and was out of balance. She further questioned why the income for the beer and wine garden for the farmers market is half the amount of the expenses.

Mr. Easterling explained that the deficit in that cost structure would be picked up by the sponsorship, which was \$5,000. He further stated that the DLBP utilizes good accounting practices and he expressed concern that it would be a cost factor for the organization to pay for an audit. The DLBP operates on a calendar year; whereas, the City operates on a fiscal year, which has presented difficulties in preparing the financials. He suggested either DLBP change to a fiscal year or the City amend the ordinance to adjust the reporting date to January, rather than mid year. Further discussion ensued between Mr. Easterling and Council Member Mounce regarding the errors in the financials.

Council Member Hansen shared that Council received an e-mail from a business owner who complained that the business owners first received notification of the 20% increase late last week without prior communication or an explanation of the need for the fee hike. He asked Mr. Easterling if he believed the increase was sufficiently explained to the business owners, to which Mr. Easterling responded in the affirmative. He added that to date the DLBP has not received any inquiries regarding the increase and that this would be the first increase in eight years. Mr. Easterling provided information on the current and proposed fees.

In response to Council Member Hansen, Mr. King stated that the development agreement for Reynolds Ranch includes language that requires a fee for a downtown component to be paid based upon the type of business: \$450 for big box retail and 60 cents a square foot for all others. Where those funds go is a decision for the City Council; however, he recommended they be spent on physical improvements in the downtown in the form of loans for façade improvements and Americans with Disabilities Act programs.

Linda Martin, Secretary of the DLBP Board of Directors, explained that the errors in the profit and loss statements were due to a printing error and assured that the statement was balanced. Last year, the Treasurer looked into securing the services of a CPA; however, only three companies returned her call indicating that they could not perform the service and the matter was not pursued further.

Mayor Hitchcock stated that Council received an e-mail message regarding the inequities in Zones A and B and further she was aware that some businesses were assessed the wrong amount.

Mary Wallace, Vice President/Past President of the DLBP Board of Directors, stated that the DLBP found some inequities, in which some businesses were overpaying, while others were underpaying. Some effort was made to review the zones; however, the consensus was that any change would require an amendment to the City's ordinance and the DLBP did not have the authority to make that change.

Mayor Hitchcock stated that amendments to the boundaries would have to be approved by the Council; however, the request would need to come from the DLBP. Mr. King added that the change would go through the protest hearing process.

Further discussion ensued regarding the map, boundaries, and zones and how amendments could be brought forward.

Council Member Mounce recommended the DLBP utilize the services of a local CPA, which would be less expensive than a full audit, to perform a review or compilation to confirm the financials are in order. She further recommended that the DLBP continue to report to Council on a calendar year.

Council Member Hansen suggested the organization reassess its present format and research a better way in which to structure itself in order to create a funding stream to continue its momentum.

Mayor Hitchcock expressed concern that this would result in reduced funding if the program went to a voluntary-type approach, and Mr. Easterling stated that the organization would die and the functions would fall onto the City.

Deputy City Manager Krueger stated that previously the amounts for the assessments were tied to the business license billing, which did not lend transparency to the process, and he reported that the billing has since been separated to be more apparent.

In response to Mayor Hitchcock, City Attorney Schwabauer reported that an amendment to the boundary could be done as part of the annual process; however, it would require an ordinance change as it sets forth the boundaries. If the boundaries are increased, a broader process would be required. Both scenarios would be subject to a 50% of the assessed value protest.

Mr. Easterling believed it would not be equitable to change the inner boundaries and he felt the zones were exactly as they should be. Further discussion ensued whether the boundaries should be changed due to recent changes in the downtown.

Council Member Beckman stated that he would like to see the amount that the City collects for the administrative fee not be a percentage; rather, it should be a flat dollar amount that reflects what it costs the City to perform this service. He requested this component be included in the ordinance when it comes back to Council. Mr. King responded that he was unsure whether or not an administrative fee was charged for this, to which Mr. Beckman stated that a fee should be charged to the DLBP to cover what it costs the City to process this assessment.

MOTION:

Council Member Beckman made a motion, Mounce second, to approve the Downtown Lodi Business Partnership 2006-07 Annual Report, as submitted, adopted Resolution of Intention No. 2006-182 to levy annual assessment, and set public hearing for October 18, 2006.

PUBLIC COMMENTS:

- Ramona Henninger, downtown Lodi merchant, stated that her business has been located in downtown Lodi for 20 years and the DLBP has done great things for the area; however, she believed the zoning and assessment were unfair. She felt she was in the wrong zone and was classified incorrectly in the "service" category, rather than in "professionals." Ms. Henninger believed the assessment should be based on gross annual income. She attempted to register her protest today with the DLBP; however, no one returned her phone call. In regard to the letter from the DLBP, she commented that it did not state a reason for the increase and she believed the communication between the DLBP and businesses was lacking.

City Attorney Schwabauer suggested that Ms. Henninger contact the City Clerk's Office for information on how to register her protest at or before the public hearing on October 18.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Beckman, Johnson, Mounce, and Mayor Hitchcock

Noes: Council Members – Hansen

Absent: Council Members – None

VOTE TO CONTINUE WITH THE REMAINDER OF THE MEETING

The City Council, on motion of Mayor Hitchcock, Beckman second, voted to continue with the remainder of the meeting following the 11:00 p.m. hour by the vote shown below:

Ayes: Council Members – Beckman, Hansen, Mounce, and Mayor Hitchcock

Noes: Council Members – Johnson

Absent: Council Members – None

K. REGULAR CALENDAR (Continued)

K-5 “Approve expenses incurred by outside counsel/consultants relative to the Environmental Abatement Program litigation (\$228,552.62)”

City Attorney Schwabauer reviewed expenses as were outlined in the staff report (filed).

MOTION / VOTE:

The City Council, on motion of Council Member Beckman, Mounce second, unanimously approved expenses incurred by outside counsel/consultants relative to the Environmental Abatement Program litigation in the amount of \$228,552.62, as detailed below:

Folger Levin & Kahn - Invoices Distribution

Matter No.	Invoice No.	Date	Description	Water Acct. Total Amount
8002	97311	8/31/2006	People v. M&P Investments	\$ 54,383.52
				(\$975.00)
8003	97307	8/31/2006	Hartford Insurance Coverage Litigation	\$128,329.65
				(\$6,337.00)
8008	97312	8/31/2006	City of Lodi v. Envision Law Group	\$ 50,101.77
				(\$560.00)
	13714	Jul-Sep 06	Keith O'Brien/PES Environmental, Inc.	\$ 441.68
	6287	7/1/2006	Peter Krasnoff, West Environ. Service	<u>\$ 3,168.00</u>
				\$228,552.62

L. ORDINANCES

L-1 Following reading of the title of Ordinance No. 1786 entitled, "An Ordinance of the City Council of the City of Lodi Amending Title 13, Chapter 13.20, 'Electrical Service,' by Repealing and Reenacting Section 13.20.225 Schedule NEM – Net Energy Metering Rider; and Adding Section 13.20.227 Schedule CEM – Co-Energy Metering Rider," having been introduced at a regular meeting of the Lodi City Council held September 20, 2006, the City Council, on motion of Council Member Beckman, Mounce second, waived reading of the ordinance in full and adopted and ordered it to print by the following vote:

Ayes: Council Members – Beckman, Hansen, Johnson, Mounce, and
Mayor Hitchcock

Noes: Council Members – None

Absent: Council Members – None

Abstain: Council Members – None

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 11:05 p.m.

ATTEST:

Jennifer M. Perrin
Interim City Clerk

**CITY OF LODI
INFORMAL INFORMATIONAL MEETING
"SHIRTSLEEVE" SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, OCTOBER 17, 2006**

The October 17, 2006, Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was canceled.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, OCTOBER 18, 2006**

EXHIBIT E

C-1 CALL TO ORDER / ROLL CALL

The City Council Closed Session meeting of October 18, 2006, was called to order by Mayor Hitchcock at 6:30 p.m.

Present: Council Members – Beckman, Hansen, Johnson, Mounce, and Mayor Hitchcock

Absent: Council Members – None

Also Present: City Manager King, City Attorney Schwabauer, Deputy City Clerk Perrin, and City Clerk Johl

C-2 ANNOUNCEMENT OF CLOSED SESSION

a) Actual Litigation: Government Code §54956.9(a); one case; *Hartford Accident and Indemnity Company, et al. v. City of Lodi, et al.*, Superior Court, County of San Francisco, Case No. 323658

b) Actual Litigation: Government Code §54956.9(a); one case; *People of the State of California; and the City of Lodi, California v. M & P Investments, et al.*, United States District Court, Eastern District of California, Case No. CIV-S-00-2441 FCD JFM

C-3 ADJOURN TO CLOSED SESSION

At 6:30 p.m., Mayor Hitchcock adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 6:55 p.m.

C-4 RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 7:01 p.m., Mayor Hitchcock reconvened the City Council meeting, and City Attorney Schwabauer disclosed that Item C-2(a) was discussion only and Item C-2(b) was not discussed.

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of October 18, 2006, was called to order by Mayor Hitchcock at 7:01 p.m.

Present: Council Members – Beckman, Hansen, Johnson, Mounce, and Mayor Hitchcock

Absent: Council Members – None

Also Present: City Manager King, City Attorney Schwabauer, Deputy City Clerk Perrin, and City Clerk Johl

B. INVOCATION

The invocation was given by Reverend Michael Voytek, Providence Reformed Church.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Hitchcock.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 (a) Following introductory comments by Joseph Wood, Community Improvement Manager, Mayor Hitchcock presented the Community Improvement Award to Gerry and Valerie Phillips, owners and residents of 930 S. Central Avenue, for their efforts in improving and maintaining the appearance of their property.

D-2 Proclamations – None

D-3 Presentations – None

E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Mayor Pro Tempore Johnson, Beckman second, unanimously approved the following items hereinafter set forth **except those otherwise noted**:

- E-1 Claims were approved in the amount of \$5,404,572.47.
- E-2 The minutes of August 16, 2006 (Regular Meeting) and September 19, 2006 (Shirtsleeve Session) were approved as written.
- E-3 Approved the plans and specifications and authorized advertisement for bids for roof replacement improvements at Legion Park, 835 South Hutchins Street, and Kofu Park, 1145 South Ham Lane.
- E-4 Adopted Resolution No. 2006-183 awarding contract for Traffic Signal Preventive Maintenance and Repair Program, Fiscal Year 2006-07, to Republic ITS, of Novato, CA, in the amount of \$18,894, and appropriating funds for on-call traffic signal repairs in the amount of \$20,000.
- E-5 Adopted Resolution No. 2006-184 authorizing the Fee Payment Agreement for 2223 West Kettleman Lane and authorizing the City Manager and City Clerk to execute the standard fee payment agreement on behalf of the City.
- E-6 Adopted Resolution No. 2006-185 approving Hold Harmless Agreement with Lodi Unified School District for temporary placement of six portable classrooms on north Grape Bowl parking lot.
- E-7 Adopted Resolution No. 2006-186 authorizing the City Manager to enter into a professional services agreement with Power Engineers, Inc. of Hailey, ID, in the amount of \$115,819, for engineering and design of the scaled-back rehabilitation of Killelea Substation and to reject all other design/engineering proposals.
- E-8 "Authorize the City Manager to execute a land lease with the Community Partnership for Families of San Joaquin for construction of a Family Resource Center at Blakely Park" was **removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar.**
- E-9 Adopted Resolution No. 2006-187 authorizing the City of Lodi to endorse the California Memorandum of Understanding in support of the National Action Plan for Energy Efficiency.
- E-10 Adopted Resolution No. 2006-188 authorizing the City Manager or designee to execute standard Electrical Interconnection and Co-Energy/Net Energy Metering Payment Agreements and adopting the standard form of said Agreements.
- E-11 Adopted Resolution No. 2006-189 authorizing the receipt of \$23,000 in grant funding from the State Department of Housing and Community Development.
- E-12 Set public hearing for November 1, 2006, to consider the following (CD):
 - a) Certify the Lodi Annexation Environmental Impact Report for the Southwest Gateway Project (including "other annexation areas") and Westside Project
 - b) Approve the Southwest Gateway Project, which includes an annexation; pre-zoning; amendment to the Bicycle Transportation Master Plan; and Development Agreement; to incorporate 305 acres into the City of Lodi (257 acres with the Southwest Gateway Project area and 47.79 contiguous acres outside the Project); to allow construction of 1,300 dwelling units, 5 neighborhood/community

parks, and a public elementary school on the west side of Lower Sacramento Road, south of Kettleman Lane, north of Harney Lane

Including a City initiated request for the "other annexation areas" (47.79 acres) for annexation, General Plan Amendment from a land use designation of PR (Planned Residential) to MDR (Medium Density Residential), and a pre-zoning of RMD (Residential Medium Density) to avoid creation of a county island

- c) Approve the Westside Development Project, which includes an annexation; pre-zoning; amendment to the Bicycle Transportation Master Plan; Development Agreement; and an amendment to the Westside Facilities Master Plan to incorporate 151 acres into the City of Lodi to allow construction of 750 dwelling units, 3 neighborhood/community parks, and a public elementary school at 351 East Sargent Road, 70 East Sargent Road, 212 East Sargent Road, and 402 East Sargent Road

ACTION ON ITEM REMOVED FROM CONSENT CALENDAR

- E-8 "Authorize the City Manager to execute a land lease with the Community Partnership for Families of San Joaquin for construction of a Family Resource Center at Blakely Park"

Mayor Pro Tempore Johnson pulled Item E-8 for further discussion.

Mayor Pro Tempore Johnson expressed various concerns regarding the proposed lease including those associated with mental health treatment at the facility, a public park located next to the youth facility, 50% usage capacity, probation services, and abandonment for a year. He also suggested six months would be a better time frame for leaving the building vacant should the program end.

Mayor Hitchcock stated she was concerned with the 50% capacity potential. She also stated the probation officer works closely with children already on probation in the surrounding schools.

Mayor Pro Tempore Johnson stated the probation, lease terms, mental health uses and other fine points should be clearly spelled out in the lease.

City Attorney Schwabauer advised that the language in the lease provides the City Council with an ability to approve, strikeout, or otherwise lockout specific uses.

City Manager King stated the 50% amount was set forth as a limitation to ensure the programs offered currently will continue to be offered in the future. He also stated that the 50% provides that no more of the space may be dedicated to a particular use; although, the City Council can decrease that amount or prohibit a particular use outright.

Mayor Pro Tempore Johnson stated he preferred to discuss alternatives and options for filling the gaps if certain uses were prohibited and a shorter abandonment time period at a future meeting.

Council Member Mounce stated she has the same concerns as Mayor Pro Tempore Johnson and two additional concerns. The two additional concerns pertained to a shorter overall lease term, in lieu of the 55 years, and maintenance problems with an outdated facility at the end of the term. She suggested returning the facility to a park if the partnership no longer needs the facility. Ms. Mounce preferred the item be brought back to Council after the concerns are addressed.

Council Member Hansen stated he is not opposed to addressing concerns but would prefer to take action on the matter tonight. He stated the persons running the program will ensure

employees are not endangering the public and the Boys and Girls Club has a similar 55 year lease. Mr. Hansen stated he agreed with reducing the abandonment period to six months and would like to move forward.

Mayor Pro Tempore Johnson stated the present situation is not similar to the County jail program because the persons working in the parks are screened by the Sheriff's Department and are convicted of non-violent and benign crimes.

Council Member Beckman stated he agreed with the six-month abandonment term and inquired about prior approval regarding use flexibility. City Attorney Schwabauer advised there is an implied duty to allow reasonable use and the City Council may tighten up the uses so long as the modifications are reasonable.

PUBLIC COMMENTS:

- Robina Asghar, Executive Director of Community Partnership for Families of San Joaquin (CPF), provided a brief overview of the program. In addressing particular concerns, Ms. Asghar stated probation officers work on youth grounds and serve families and children in the Family Resource Center (Center). She stated they do not bring in criminals to the Center and mental health services refer to the counseling services offered to families and children.

Council Member Hansen inquired about the specifics of the probation program. Ms. Asghar stated there is no invitation to adults who are on probation and the program provides supervision. Mr. Hansen asked if the probation program played more of a preventive and supportive role. Ms. Asghar replied yes. Mr. Hansen inquired about the peacekeeper program for gang outreach. Ms. Asghar stated the peacekeepers work with children who are in gangs or subjected to gangs. She stated peacekeepers work with Lodi Unified School District directly and are not housed at the Center.

Mayor Pro Tempore Johnson indicated Ms. Asghar has reasonable responses to the Council's concerns, the solutions should be clearly written into the lease, and the lease should be brought back to Council if it cannot be rewritten tonight.

Council Member Mounce stated she still has concerns regarding the 55-year term and building maintenance at the end of the lease.

Mayor Hansen stated the lease cannot be rewritten from the dais, agreed that the six-month abandonment period is sufficient, suggested a lease term reduction to 25 to 30 years and urged the revised lease be brought back to Council at the next meeting.

Mayor Hitchcock requested clarification regarding uses. City Attorney Schwabauer advised the uses are spelled out in the lease and the Council would need to amend the lease now in order to effectuate any proposed changes or restrictions to the mental health, probation, and gang outreach uses.

MOTION:

Council Member Beckman made a motion, Hansen second, to authorize the City Manager to execute a land lease with the Community Partnership for Families of San Joaquin for construction of a Family Resource Center at Blakely Park, with an amendment to the language in the lease regarding abandonment/cessation of use by CPF to be for a continuous period of six months, rather than 360 days.

Mayor Pro Tempore Johnson stated he is not prepared to approve the matter tonight and suggested Ms. Asghar meet with the City Attorney to revise the lease as needed.

MOTION WITHDRAWN:

Council Member Hansen stated he can support continuing the item for language modifications as long as the matter comes back to Council at the next meeting. Mayor Hitchcock suggested the matter be placed on the Consent Calendar for the next City Council meeting. Council Member Hansen withdrew his second, and the motion **died** for lack of a second.

City Attorney Schwabauer stated he was generally clear on the direction Council wanted to take and asked for specific direction regarding building maintenance. Council suggested a form of security, such as a rehabilitation bond, be researched.

The matter was continued to the November 1, 2006 City Council meeting.

F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Woody Alspaugh spoke in opposition to the potential development of the greenbelt area between Stockton and Lodi. He provided a description of transfer development rights and requested that the City remain apprised of related issues.
- Chuck Easterling spoke in favor of stronger law enforcement efforts to control vagrancy within the City. Mr. Easterling spoke specifically of his concerns regarding vagrancy in the downtown area on Sacramento Street between Pine and Elm Streets and suggested the matter be reviewed by the City Council at a regular meeting. Council Member Hansen stated the aggressive solicitor ordinance is coming before the Council shortly and the ordinance may have some overlap, but it focuses on a different issue. Mayor Hitchcock suggested the ordinance come back to Council in the near future.
- David Johnson spoke in opposition to a recent decision by SPARC to overturn conditions of his use permit. Mr. Johnson stated he addressed the City Council last month on the same issue and due to a lack of a response, is requesting the matter be put on a shirtsleeve session or Council agenda before November 7, 2006. Mayor Hitchcock stated staff is working on the matter and Mr. Johnson's patience is appreciated.

G. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- Mayor Pro Tempore Johnson urged the public to attend the Candidate's Forum at Hutchins Street Square and complimented the Fire Department in its handling of the fire on Pine Street.
- Mayor Hitchcock stated she attended the annual arts open house, which was a great success.

H. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

- In regard to the vagrancy concerns, City Manager King stated the aggressive solicitation ordinance and the loitering ordinance will be coming before the City Council shortly. Mr. King stated the Police Department is continuing to look at loitering in the downtown area and may be addressing the matter by way of an anti-camping ordinance.

In regard to David Johnson's comments, City Manager King stated the matter is on the looking ahead schedule and is prioritized with additional citizen requests. Mr. King stated it is difficult to process and manage the numerous issues that arise, but staff is trying to address the matter in an expeditious manner.

City Manager King introduced new City Clerk Randi Johl.

I. PUBLIC HEARINGS

- I-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hitchcock called for the public hearing to consider adopting resolution levying annual (2007) assessment for Downtown Lodi Business Improvement Area No. 1 and confirming the Downtown Lodi Business Partnership 2006-07 Annual Report (as approved by Council on October 4, 2006).

Mayor Hitchcock reviewed the mechanics of the hearing procedure requesting business owners in the affected area protesting the proposed levy to speak first for the ease of recording the formal protest, followed by general public comments on the matter.

City Manager King stated the item is a follow-up action item to a work plan submitted by the Downtown Lodi Business Partnership (DLBP) and the process requires the City Council to conduct a public hearing. Mr. King stated the City Council must open the public hearing and close it within thirty (30) days. He also stated an ordinance will be brought back to Council at a later date.

Chuck Easterling, President of the DLBP, provided an overview and history of the financial statements submitted to the City Council, which were submitted as part of the record. Mr. Easterling discussed topics including, but not limited too, coinciding the statements with the DLBP and City fiscal years, public access to the financial statements, Brown Act compliance for Board meetings, making and correcting mistakes by an all-volunteer Board and paid staff of two, an increase in fees to account for inequities, proposed 20% increase to offset City funding, layout of funds in the financial statement, and general promotion and improvement of the downtown business area.

Mayor Hitchcock stated she has seen positive changes in the downtown area over the years and asked how long it has been since the last increase. Mr. Easterling replied assessments have never been raised in the DLBP's eight year existence.

Council Member Hansen stated his prior comments may have been misunderstood and suggested there may be a better way to perform similar functions without bureaucratic oversight. Mr. Easterling analogized the Lincoln Center scenario stating it is not a similar situation because the DLBP does not have access to similar resources. Council Member Hansen stated the timing is good to reassess the process to ensure success can be achieved within a large group of diverse and independent business owners.

Council Member Mounce thanked Mr. Easterling for the revised financials and stated she did not believe the DLBP was involved in any wrongdoing. Mr. Easterling stated recovery will be difficult and the job of the DLBP is to manage downtown affairs, but it has become more of an event organization. Mr. Easterling stated it is difficult to do capital improvements and street clean-ups when baselines are so low, and any alternative is going to involve costs to businesses.

Council Member Beckman stated the problem appears to be within the ordinance and inquired about the status of the organization's existence. City Attorney Schwabauer stated the organization is funded through June 2007, but it will not be able to carry itself from January to June 2007 if the assessment is not approved. Mr. Schwabauer stated the organization will legally exist but will have no funds to operate. Mr. Easterling stated the three remaining events are service related and give back to the community.

Mayor Hitchcock stated she would hate to see funding cut off because the organization did improve the downtown area over the last eight years. She stated it is difficult to operate a business on a shoestring budget with no increases over the last eight years.

Hearing Opened to the Public

NOTE: Hearing opened to receive formal protests against the levy of assessment.

- Russ Daniels (Stogie's Cigar Lounge) protested against the proposed increase based on his concerns of a lack of benefit to the businesses on the outer edge of the district boundaries and two businesses operating with the same name.

NOTE: Protest portion of the hearing closed.

RECESS

At 8:45 p.m., Mayor Hitchcock called for a recess, and the City Council meeting reconvened at 8:55 p.m.

I. PUBLIC HEARING (Continued)

I-1 NOTE: Hearing portion remained open to receive general comments regarding the subject matter.
(Cont'd.)

- Peter Westbrook spoke in favor of the proposed increase based on his support of the DLBP and their efforts in the community over the years.
- Ramona Henninger spoke in opposition of the proposed increase based on her concerns of inequities in zoning and DLBP's poor business relations with other businesses.
- Bryan Hayn spoke in opposition of the proposed increase based on his concerns of vacancies on Sacramento Street, DLBP's poor business relations with other businesses, financial accounting, and openness of Board meetings. Mayor Hitchcock asked Mr. Hayn if he attends Board meetings. Mr. Hayn stated he does not attend but he did provide ideas to his sister, the former DLBP president.
- Russell Smith spoke in opposition to the proposed increase based on his concern of a lack of communication by DLBP with its members. Council Member Hansen asked Mr. Smith if he received any information regarding the assessment when he purchased the business eighteen months prior. Mr. Smith replied he was told about the assessment but did not receive any literature from the City or DLBP.
- Trina Anderson spoke in opposition of the proposed increase based on her concerns of DLBP's poor business relations with other businesses, lack of oversight, inequities between businesses based on event location, and financial practices.
- Pat Patrick, President of the Chamber of Commerce, spoke in support of the proposed increase pursuant to the Chamber's policy to support the DLBP and assist in making it a successful organization. Mr. Patrick suggested a focus group assess the best way to move forward and work together to ensure the success of the downtown area. Council Member Hansen asked Mr. Patrick if he believes businesses benefit from the DLBP. Mr. Patrick stated while he can better speak about the Chamber's events, some businesses might benefit more than others from the DLBP events. Mayor Hitchcock suggested some businesses may indirectly benefit simply by other businesses being located in the area.
- Maureen Williams spoke in opposition to the proposed increase based on concerns of zoning and event exposure, inequities for Sacramento Street business owners and DLBP's poor business relations and practices. She requested an audit be performed before an increase is implemented. Council Member Hansen inquired about Ms. Williams' event. Ms. Williams stated she did not know if the DLBP included her event as their own.
- Tilly Easterling spoke in favor of the proposed increase based on her support of the improvements made in the downtown area over the last several years. She stated there is a collateral benefit to all businesses because businesses would not exist without one another and urged everyone to get involved with the DLBP to work together to address concerns.

- Greg Solligan spoke in favor of the proposed increase based on his support of the DLBP as a volunteer organization with minimal resources and encouraged business owners to serve on the Board.
- Nancy Hauan, Treasurer of the DLBP, stated she was not paid to audit the books, an informal audit was done by Aletha Cochran, tax returns are done by a district member, and payroll is done by an outside agency. Mayor Hitchcock inquired about the concerns voiced at the meeting. Ms. Hauan stated she would need to review the information.

Council Member Mounce inquired about the money received at the Farmers Market. Ms. Hauan and Mr. Easterling stated the proceeds are received by the Beer and Wine Company and then given to the DLBP. Ms. Mounce suggested reviewing the event income to determine whether or not the event is worth doing.

- Peter Westbrook stated every transaction at the Beer and Wine Garden is cash and the process probably needs to be reviewed. He also stated special events create a collateral benefit by bringing awareness to the downtown area.
- Chuck Easterling stated the two schools of thought are events create synergy and everyone benefits or it takes away from businesses because merchants sell their own products. He stated the DLBP did a sponsorship fee for the Beer and Wine Garden this year. He stated due to Alcoholic Beverage Control (ABC) requirements, the vendor does set up, collects proceeds directly, turns the proceeds over to the DLBP, and DLBP writes a check for the product. Mr. Easterling stated they get approximately \$5,000 for beer and wine. He also refuted earlier claims regarding business practices and zoning inequities.

Council Member Johnson asked why the income of \$5,000 for a sponsorship fee was not listed. Mr. Easterling stated the process for the Beer and Wine Garden is set up to meet the requirements of the ABC and the license.

Council Member Hansen confirmed the cash collection was based on ABC requirements and asked if the one that owns makes a profit. Mr. Easterling replied yes.

Mayor Hitchcock suggested rotating the sponsorship and Mr. Easterling agreed it was a good idea and stated as of the current time no other person wanted to do it.

- David Johnson spoke in opposition to the procedures associated with handling cash at the Beer and Wine Garden.
- Trina Anderson stated DLBP was not in compliance with the financial obligations imposed upon it as a 501c(6) business.
- Brian Hayn stated the process for allowing Lodi Beer and Wine Company to have the Beer and Wine Garden is flawed and suggested a review of the same.
- Roger Remche, owner of Lodi Beer and Wine Company, provided a brief history of how and why the business began holding the Beer and Wine Garden, stated the \$5,000 amount was a benchmark set by the previous company, and suggested that logistically it makes sense to hold the event where it is.

Public Portion of Hearing Closed

Council Member Hansen inquired about the number of businesses that protested. Deputy City Clerk Perrin replied approximately 100.

MOTION #1 / VOTE:

The City Council, on motion of Council Member Mounce, Hitchcock second, unanimously certified the results of the protest hearing as follows:

Averaged total weighted assessment:	37,450
50% of the weighted assessment:	18,725
Protest fails at:	10,163 (equivalent to 27.14%)

Discussion ensued among the City Council and City Manager King regarding the difficulty of making a decision, how the DLBP evolved, the need for an audit, minority and majority concerns, business improvement district history, and the City facilitating a solution between the two groups.

MOTION #2:

Mayor Hitchcock made a motion to adopt resolution levying annual (2007) assessment for Downtown Lodi Business Improvement Area No. 1 and confirming the Downtown Lodi Business Partnership (DLBP) 2006-07 Annual Report. The motion **died** for lack of a second.

MOTION #3:

Mayor Pro Tempore Johnson made a motion, Mounce second, to approve the DLBP 2006-07 Annual Report, with the elimination of the levy of assessment. City Attorney Schwabauer pointed out that it was unnecessary to approve the DLBP Report, as it was previously approved at the regular Council meeting of October 4, 2006.

MOTION #4 / VOTE:

Council Member Mounce made a motion, Johnson second, to adopt a resolution levying annual (2007) assessment, without the proposed 20% increase, and confirming the DLBP 2006-07 Annual Report; and further to require the DLBP to have a full audit performed on its financial records in order to address the concerns of the business owners and review the matter in six months to determine whether or not to assess the 20% increase. The motion **failed** by the following vote:

Ayes: Council Members – Johnson and Mounce

Noes: Council Members – Beckman, Hansen, and Mayor Hitchcock

Absent: Council Members – None

Council Member Beckman suggested tabling the item to modify the structure of the organization. City Manager King stated the two camps associated with business improvement districts are the “David Kilborn Model” and “Marco LiMandri Model” and stated the City’s current set up is based on the Kilborn model. Mr. Beckman suggested contacting Marco LiMandri.

MOTION #5:

Council Member Beckman made a motion to direct the City Manager to contact Marco LiMandri regarding the possibility of contracting with him as a consultant to address the issues brought forward by the business owners. The motion **died** for lack of a second.

City Attorney Schwabauer advised that tabling the matter past September would result in operational difficulties for the DLBP because it would legally exist but there would be no funding.

Council Member Johnson inquired about holding the current level assessment while providing research time for the LiMandri model. City Attorney Schwabauer stated the legal mechanism to do that is to approve the existing assessment and return in six months with a revised assessment, which would require additional procedures.

MOTION #6 / VOTE:

The City Council, on motion of Council Member Hansen, Hitchcock second, adopted Resolution No. 2006-190 levying annual (2007) assessment for Downtown Lodi Business Improvement Area No. 1, as submitted (i.e. including the 20% increase in the assessment), and confirming the DLBP 2006-07 Annual Report. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, and Mayor Hitchcock

Noes: Council Members – Johnson and Mounce

Absent: Council Members – None

Further, Council Member Hansen suggested that the DLBP address the issues raised by the property owners and that it review other potential models under which it could be formulated.

VOTE TO CONTINUE WITH THE REMAINDER OF THE MEETING

Mayor Pro Tempore Johnson made a motion, Hitchcock second, to continue with the remainder of the meeting following the 11:00 p.m. hour. The motion **failed** by the following vote (requires a four-fifths vote):

Ayes: Council Members – Hansen, Johnson, and Mayor Hitchcock

Noes: Council Members – Beckman and Mounce

Absent: Council Members – None

J. COMMUNICATIONS

J-1 Claims filed against the City of Lodi – None

J-2 Appointments – None

J-3 Miscellaneous – None

K. REGULAR CALENDAR

K-1 “Authorize the City Manager to execute agreement with property owner for watershed mural at 207 West Oak Street” was ***pulled from the agenda pursuant to the above vote.***

K-2 “Adopt resolution authorizing the City Manager to accept a grant award for the Railroad Corridor Transit Oriented Development (TOD) Plan from the California Department of Transportation (Caltrans) in the amount of \$75,000 with an in-kind contribution of \$9,250 and a fiscal contribution of \$9,500 and to execute all necessary agreements; and upon execution of the grant by Caltrans, authorize the City Manager to solicit proposals from qualified consultants to prepare a Railroad Corridor TOD Plan in a designated area downtown” was ***pulled from the agenda pursuant to the above vote.***

K-3 “Adopt resolution authorizing the City Manager and Electric Utility Director to procure energy and/or natural gas for fiscal year 2007-08 at a cost not to exceed \$25 million” was ***pulled from the agenda pursuant to the above vote.***

K-4 Approve expenses incurred by outside counsel/consultants relative to the Environmental Abatement Program litigation and various other cases being handled by outside counsel (\$11,309.23) was ***pulled from the agenda pursuant to the above vote.***

L. ORDINANCES

None.

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 11:14 p.m.

ATTEST:

Randi Johl
City Clerk

**CITY OF LODI
INFORMAL INFORMATIONAL MEETING
"SHIRTSLEEVE" SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, OCTOBER 24, 2006**

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, October 24, 2006, commencing at 7:01 a.m.

A. ROLL CALL

Present: Council Members – Beckman, Johnson, Mounce, and Mayor Hitchcock
Absent: Council Members – Hansen
Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Johl

B. TOPIC(S)

B-1 Preliminary Year-End Financial Report (CM)

City Manager King provided a brief introduction of the preliminary year-end financial report and budget process, stating the overall goal associated with the budget is to control costs and expenditures while building reserves.

Deputy City Manager Krueger provided a presentation outlining the preliminary year-end financial report. Mr. Krueger stated the purpose of the report is to provide preliminary budget numbers in a format that brings informational data to individuals in a manner that is easy to read and understand. He also recommended using a similar format in the future.

Mr. Krueger provided a brief description of each of the following: general fund, electric fund, wastewater fund, water fund, library fund, capital outlay fund, community development fund, Community Development Block Grant fund, employee benefit fund, vehicle and equipment replacement fund, self-insurance fund, public safety special revenue fund, streets fund, transit fund, transportation development act fund, trust and agency fund, debt service fund, parks special grants fund, and the fleet services internal service fund. He also reviewed the unaudited reserved, unreserved, cash balance and total fund balance numbers for these funds as provided in the attachment to the agenda and made part of the record. Mr. Krueger stated detailed reports are also provided on the Internet.

Council Member Mounce asked about the need to do cash adjustments. Mr. Krueger stated the fund balances are listed on an accrual basis and the cash balance is used to pay obligations as of June 30, 2006.

Council Member Mounce inquired about the opening balance. Mr. Krueger stated he believed the rough number was between \$12 million and \$13 million. He stated he would provide Council with follow-up information.

City Manager King stated staff will bring an electric reserve policy to the Council in the near future. He stated a consultant will provide the City with specific information regarding the policy itself, implementation, and the needs of the electric fund. A related action was scheduled for the November 15, 2006, Council meeting.

Mayor Hitchcock asked if the general time frame is three to six months for the electric fund. City Manager King stated there is approximately nineteen days of cash on hand. Deputy City Manager Krueger stated he believes the time may be between fifteen and sixty days. Electric Utility Director Morrow stated the time is usually thirty to sixty days; however, the Agency tries to zero in on forty-five days.

Mayor Hitchcock asked how much the fire impact fees owe the water fund. Mr. Krueger replied \$1.2 million.

City Manager King, in reviewing the vehicle and equipment replacement fund, stated standard business practices are being reviewed to determine a rolling stock, defined as money specifically set aside for vehicle and equipment replacement on a regularly scheduled basis, which is essential in maintaining fleet and equipment over an extended period of time.

Mayor Hitchcock asked what projects were not completed in relation to the streets fund. Public Works Director Prima stated the Stockton Street project was not completed. Mr. Prima stated he would follow-up with the Council as to the other projects that were not completed.

Mayor Hitchcock inquired about the overall process of anticipating numbers for the budget. Mr. Krueger stated there is a mid-year budget adjustment. He also stated staff is very conservative with revenues and, although expenditures are anticipated, the funds are not always spent.

City Manager King stated the overall goal is to try to build reserves by being more conservative with revenues while tightening down on expenditures. He stated as the City becomes more fiscally sound and the reserves continue to build, optimism can grow.

Mayor Hitchcock asked how many years of debt service remain. Mr. Krueger stated there are approximately 20 years. Mayor Hitchcock inquired about balloon payments. Mr. Krueger stated the repayment program involves interest reduction and principal increase while the general payment remains steady.

Mr. Krueger stated the audit is taking place, the Comprehensive Annual Financial Report will be prepared, and the report to the State is due on November 1, 2006.

Mayor Pro Tempore Johnson inquired about the number of formats used for reporting. Mr. Krueger stated he is not entirely comfortable with any specific format because it is important to build a system that is useful to individuals. Mr. Krueger compared various reporting formats including those prepared for consistency among government agencies, rating agencies, and private industry. He also stated an analysis of performance measures may be conducted.

City Manager King stated the format of the report often depends upon who is telling us what to do, what information is needed, and when the information is needed. He stated Government Code Section 40804 requires the City to use the Secretary of State's form for the report that is submitted to the State. Mr. King also discussed the Governmental Accounting Standards Board, the Government Finance Officers Association, standard audits, audits without exception, Certificates of Excellence, and staff communications.

Mayor Hitchcock stated she appreciated the cash basis report, which is helpful to determine where the City stands. She asked if it is safe to assume the City has turned a corner financially. Mr. Krueger stated that while there are challenges in the future, the City has turned a corner.

C. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

None

D. ADJOURNMENT

No action was taken by the City Council. The meeting was adjourned at 8:03 a.m.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
SPECIAL JOINT CITY COUNCIL MEETING WITH THE
ANIMAL SHELTER TASK FORCE, COMMUNITY SEPARATOR/GREENBELT
TASK FORCE, GRAPE BOWL AD HOC COMMITTEE, GREATER LODI AREA YOUTH
COMMISSION, LIBRARY BOARD OF TRUSTEES, LODI ARTS COMMISSION,
LODI BUDGET/FINANCE COMMITTEE, LODI IMPROVEMENT COMMITTEE,
LODI SENIOR CITIZENS COMMISSION, LODI TOURISM BUSINESS IMPROVEMENT
DISTRICT ADVISORY BOARD, PLANNING COMMISSION, RECREATION COMMISSION,
AND SITE PLAN AND ARCHITECTURAL REVIEW COMMITTEE
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, OCTOBER 25, 2006**

A. CALL TO ORDER / ROLL CALL

The Special Joint City Council meeting with the above-listed Boards and Commissions of October 25, 2006, was called to order by Mayor Hitchcock at 6:00 p.m.

Present: Council Members – Johnson and Mayor Hitchcock

Absent: Council Members – Beckman, Hansen, and Mounce

Present: Various Board and Commission Members

Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Johl

B. TOPIC(S)

B-1 “Conduct AB 1234 Ethics Training for Members of the City Council and City Council-Appointed Boards and Commissions”

City Attorney Schwabauer and Deputy City Attorney Magdich conducted ethics training as mandated by AB 1234, and codified in Government Code Sections 53234 and 53235, for the City Council and Boards and Commissions. Training materials used for the session were provided to participants and made part of the record. Topics covered included, but are not limited too, session objectives, ethics laws, personal financial gain issues, bribery, disqualification, conflicts of interests, penalties, contractual rules, travel, employment issues, gifts, public resources, expense reimbursement, transparency laws, open meetings, public records, financial disclosures, fundraising, fair process laws, best practices, and additional resources.

C. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 8:00 p.m.

ATTEST:

Randi Johl
City Clerk